United States Court of Appeals

for the Second Circuit



APPELLANT'S APPENDIX

UNITED STATES COURT OF APPEALS
FILED
JAN 10 1977
M. DANIEL FUSARO, CLERK
SECOND CIRCUIT

76-7580

B

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

INTERNATIONAL CONTROLS CORP.,
Plaintiff-Appellee,

vs.

ROBERT L. VESCO, et al.,
Defendants,

and

VESCO & CO., INC.,
Defendant-Appellant.

CIVIL ACTION—ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK
SAT BELOW: HON. CHARLES E. STEWART, JR., U.S.D.J.

APPENDIX FOR DEFENDANT-APPELLANT, VESCO & CO., INC.

ARUM, FRIEDMAN & KATZ,
450 Park Avenue,
New York, New York 10022

and

HANNOCH, WEISMAN, STERN
& BESSER,
744 Broad Street,
Newark, New Jersey 07102

Attorneys for Defendant-Appellant,
Vesco & Co., Inc.

ROBERT C. EPSTEIN
On the Brief

N.J. Appellate Printing Co., Inc., South Plainfield, New Jersey (201) 753-0200

PAGINATION AS IN ORIGINAL COPY

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BEST COPY AVAILABLE

CIVIL DOCKET
TATES DISTRICT COURT

73 CIV. 2318

Jury demand date:

JUDGE STEWART

No. 106 Rev.

NATIONAL CONTROLS CORP.,

Plaintiff,

-against-

T L. VESCO; HARRY L. SEARS, FRANK G.
Y, NORMAN LeBLANC, STANLEY GRAZE,
N F. MEISSNER, ULRICH J. STRICKLER,
RD E. CLAY, WILBERT J. SNIPES,
RIC J. WEYMAR, GILBERT R.J. STRAUB,
NRY BUHL III, RALPH P. DODD, ALWYN
HAUER, GEORGE PHILLIPP, JOEL CRADY,
EY BAILEY, VESCO & CO., INC., IOS
COLUMBUS TRUST COMPANY, LIMITED,
AS COMMONWEALTH BANK, INTERNATIONAL
HP, KILMOREY INVESTMENTS LTD., VALUE
AL LTD., GLOBAL HOLDINGS LTD., GLO-
INANCIAL LTD., BUTLERS BANK, LTD.
known as WHO HOLDINGS LTD.), ALLAN
TLER, BANK CANTRADE LTD., FAIRFIELD
EN CORPORATION, FAIRFIELD GENERAL
GARRISON, SKYWAYS LEASING CORPORATION
ARING MIDLAND BANK-NEW YORK,

Defendants.

ATTORNEYS

For plaintiff:

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Shanley and Fisher
570 Broad St.
Newark,New Jersey(deft.Fairfield Gen
Corp. and Fairfield Leasing Corp.)

Clayton and Sherman
30 Rockefeller Plaza,NCY 10020
586-4300(deft. Shirley Bailey)

		DATE	NAME OR RECEIPT NO.	REC.	DISB.
I	Clerk				
	Marshal				
	Docket fee				
	Witness fees				
	Depositions				

73 Civ.2518 INTERNATIONAL CONTROLS CORP VS.

ROBERT L. VESCO ET AL

73 CIV. 2518

JUDGE STEWART

PROCEEDINGS	Date Order or Judgment Noted

Filed Complaint.Issued Summons

Filed Pltff's Order to Show Cause and Temporary Restraining Order before Judge Stewart,Room 2602,6/13/73,2:00 P.M.,re:enjoining ,pendente lite,defts Fairfield Aviation Corp and Skyways Leasing Corp,directors,etc.from prosecuting or taking any steps in furtherance of (i)action entitled"Fairfield Gen.Corporation,etc.as ind. Stewart,J.;Affdvt of David M.Butowsky in support of application to enjoin and restrain prosecution of New Jersey Actions.;affdvt of Malcolm McAlpin;Affdvt of Allen Shinn.

Exhibits to Affdvt of Allen Shinn.

Filed Pltff's Affdvt of Personal Service by Don Shahigian;Affdvt of Personal service by James P.Pettit;Affdvt of Substituted Service by James P.Pettit upon Alwyn Eisenhauer;affdvt of personal service by Joseph A.Bondi upon Fairfield Aviation Corp,Fairfield Gen.Corp and Skyways Leasing Corp,etc.

Filed Stip & Order extending defts time to answer S&C from 6/13/73 to 6/27/73. Carter,J.

Filed Pltff's ORDER. Julian Maynard of any member,etc over age of 21 and not a party to action are auth.to effect service of process in action upon defts: Vesco,Beatty,LeBlanc,Stanley Craze,Meissner,Strickler,Weymar,Eisenhauer,Clay,Phillips,Grady,I.O.J.Ltd.Bahamas Commonwealth Bannk, Intnl Bancorp,Kilmorey Investments Ltd.,Value Capital Ltdl,Global Holding Ltd.Global Financial Ltd and Allan J.Butler.dated 6/15/73 Clk. Affdvt of C.Leonard Gordon

Filed Affdvt of David M.Butowsky and Order extending Temporary Restraining Order returnable 6/28/73 from 6/8/73.Stewart,J. mn

Filed deft Alwyn Eisenhauer's notice of motion re: dismissal ret:6-27-73.

Filed brief of Alwyn Eisenhauer in support of motion to dismiss.

Filed deft Vesco's notice of motion re: dismissal ret: 6-18-73.

Filed brief in support ofmotion todismiss by deft Vesco.

Filed MEMO-END. on motion dtd this date. After hearing the parties and reviewing their papers, this court denies the motion herein. See the decision of the Court in transcript of hearing on 6-18-73. The motion is denied without prejudice to deft's right to renew its application up on a showing of additional relevant facts. STEWART,J. (mn)

Filed order that James P. Pettit is appointed to serve summons and complaint on any or all defts', etc. Stewart,J.

Filed pltff's proposed findings of fact and conculsions of law in support of its motion for a preliminary injunction and in opposition to the motions of certain defts' to dismiss the complaint.

Filed order that defts' Skyways Leasing Corp., Fairfield General Corp., Fairfield Aviation Corp., Frank G. Beatty, Joel Grady and Alwyn Eisenhauer are enjoined, pendente lite, as indicated. Ordered, that deft. Vesco & Co., Inc., its directors, officers, agents, etc., are enjoined, pendente lite, as indicated. Ordered, that the motions of deft. Vesco & Co.,Inc., Fairfield General Corp., Fairfiel Aviation Corp. and Skyways Leasing Corp., to dismiss the complaint is denied. Ordered, that the motion of deft. Alwyn Eisenhauer to quash service in the within action be, and is denied in all respect. Stewart,J. M/N

Filed affdvt. of James P. Pettit, Re: service of summons & complaint on C. Henry Buhl III - on 7/2/73

Filed deft's(Vesco & Co. notice of motion to dismiss-ret. 6/27/73 HWS&B

Filed stip. and order that the time of deft. Ralph P. Dodd to answer complaint is ext. to Aug. 31,1973.So ordered,Stewart,J.

see page -3-

FILINGS—PROCEEDINGS | AMOUNT REPORTED IN EMOLUMENT RETURNS

16-73	Filed consent order modifying preliminary injunction filed July 5,1973 be amended and modified as indicated, So ordered, Stewart,J.
6-73	Filed affdvt. of James P. Pettit that he served Frank G. Beatty with a copy of complaint, summons and order to show cause, on 6-13-73
9-73	Filed pltffs affdvt. of James P. Pettit that he served deft. Marine Midland Bank true copy of summons and complaint on 7-16-73 by Mr. Robert F. Harrigan.
19-73	Filed consent order modifying preliminary injunction. ORDERED that the preliminary injunction dated 7/3/73 and filed 7/5/73 be and the same is amended and modified to permit Alwyn Eisenhauer to ~~perxxfxxfx~~ perform such services for Skyways Leasing Corp etc,as indicated(see order). So ordered, Stewart, J.
9-73	Filed stip. and order that the time for defts. to answer complaint is ext. to Aug. 20,1973 for defts.Frank Beatty and Wilbert Snipes.So ordered, Stewart, J.
20-73	Filed stip. and order that the time for deft.Vesco & Co, inc, to answer complaint is ext. to Aug. 20,1973. So ordered, Stewart, J.
6-73	Filed transcript of record of proceedings dtd. 6-18-73
6-73	Filed transcript of record of proceedings dtd. 7-9-73
6-73	Filed transcript of record of proceedings dtd. 6-27-73
6-73	Filed by defts' Fairfield General Corp., Faifield Aviation Corp. and Skyways Leasing Corp. in support of motion to dismiss: 1) affdvt. of Joel M. Grady 2) Brief in support of motion to dismiss 3) supplemental brief in support of motion to dismiss.
6-73	Filed by deft. Vesco & Co., Inc. memorandum in support of motionsto dismiss.
6-73	Filed by pltff memorandum in support of motions by pltff and in opposition to motions of certain of the defendants.
4-73	Filed notice of appeal to the USCA for the 2nd Circuit from order granting injunction pendente lie vs. Inter alia, entered 7-3-73 as modified 7-11-73 - appeal filed by defts Fairfield General Corp., Fairfield aviation Corp. and Skyways Leasing Corp. - fee paid - m/n
1-73	Filed order appointing Lois S. Yohonn to serve process on deft. Robert L. Vesco by depositing a copy of summons and complaint herein upon the last known residence in Nassau, Bahamas. -- Stewart, J. (m/n)

(over)

	FILINGS--PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
1,73-	Filed ORDER that Lois S. Yohonn is authorized to serve summons and complaint upon deft. Robert Vesco.Stewart,J.	
31,73-	Filed deft. Robert Vesco & Co,Inc. notice of appeal to the Second Circuit appealing from the whole and every part of the order of J.Stewart dated and entered in this action on July 3,1973 which inter alia granted pltfs. applications for prel. injunction;also Vesco and Co., Inc. will also challenge without in any way entering any appearance whatsoever the propriety of the entry of a second order of J.Stewart on July 3,1973 in case of 72 5001 purportedly directed to deft. Vesco and Co,Inc. which was not a party to such action. Mailed notices to: Shea Gould,Climenko and Kramer 330 Madison Ave. NYC 10017 and David M. Butowsky 230 Park Ave,NYC 10017	
-73	Filed Stip & Order extending time for deft Marine Midland Bank to answer complaint to 9/6/73.STEWART,J.	
-73	Filed Pltff's Temporary Restraining Order. Ordered that deft. Robert L.Vesco,agents,succesoors,etc. are hereby temporarily restrained from taking any action to remove the yacht"Patricia" from the territorial limits of the U.S. up to and including 8/13/73 & ordered that pltff is authorized to seek ancillary relief in Florida in support thereof & motion for a preliminary injunction shall be held on 8/13 /73,2:30 P.M.WARD,J.	
3	Filed Pltff's Amendment to Temporary Restraining Order.Ordered that deft Robert L.Vesco,agents,etc.temporarily restrained from taking any action to remove yacht"Patricia" etc.;ordered that hearing on motion for preliminary injunction shall be held on 8/9/73 , 9:30 A.M.,Courtroom 128,US Cthouse,Foley Sq.NY.WARD,J.	
73	Filed Pltff's Amendment to Temporary Restraining Order.Ordered that deft. Robert L.Vesco,agents temporarily restrained from taking any action to remove yacht"Patricia"from Merrill Stevens Dry Dock,etc.ordered that pltff is auth.to seek ancillary relief in Fla in support thereof ordered that hearing on motion for preliminary injunction shall be held on 8/14//3,11:00 A.M.Room 2602,U.S.Courthouse,Foley Sq.NY	
73	Filed ORDER--ORDERED that the deposition of Joe Sutton be taken on Aug. 17,1973 in Miami,Florida and ORDERED that a subpoena be issu directing Joe Sutton to appear for aforesiad deposition and to bring wiht him documents relevant to yacht Patricia.Stewart, J.m	

DATE	PROCEEDINGS
4-73	Filed amendment to temporary restraining order--ORDERED that such TRO be further amended and the same is amended to read: ORDERED that the yacht Patricia may be moved from Merrill Stevens Dry Dock to Aubury and Co.:ORDERED that defts. Vesco,etc. are temporarily restrained from taking any action to remove yacht Patricia from Aubury and Co. Marina up to Aug. 22,1973 and that thepltf. is authorized to seek ancillary relief in florida and that hearing RE on Motion for a prel. inj. shall be held on Aug. 22,1973 In Rt.12E.Stewart, J. n/m
0-73	Filed stip. and order that the time of defts. Frank Beatty and Wilbert Snipes to answer complaint is ext. to Sept. 28,1973. So ordered, Wyatt, J.
-73	Filed deposition of Joseph Sutton taken on Aug. 17,1973.
-73	Filed affdt. of Lois Yohonn(for pltf.)
16-73	Filed affdt. of Arthur Christy re: motion dated Aug. 3,1973 made by pltf. for a temporary restraining order and an injunction restraining Vesco from taking any action to remove yacht :Patricia,etc.
8-73	Filed pltfs. notice that an amendement to TRO was filed on Aug. 7,1973 in this court.
16-73	Filed transcript of hearing dated June 27,1973.
16-73	Filed transcript of hearing dated June 18,1973.
16-73	Filed transcript of hearing dated July 9,1973.
8.20/73	Filed Affidavit in opposition to Affidavit filed Aug. 16, 1973, seeking dissolution of Temporary Restraining Order
.21,73	Filed Reply Affidavit in Support of Motion for Preliminary Injunction.
.21,73	Filed Order for extension of Time to Answer Complaint, Deft.Vesco Co,Ltd to September 30, 1973, So ordered, Wyatt, J.
24-73	filed ORDER--ORDERED that deft. Robert Vesco,etc. are enjoined pendente lite,from taking any action to remove the yacht Patricia from the teritorial limits of the US.Stewart, J. m/n
24-73	Filed amendment to TRO- ORDERED that the TRO dated Aug. 3 1973 as maneded by orders dated Aug.6,8, & 14,1973 is continued as to Andean Credit SA and Andear Credit,SA,etc. are temp. restrained from taking any action to remove the yacht Patricia III from the territorial limits of the US up and to Sept.4,19 etc.(as indicated) ORDERED that the hearing on the motion for a prel. inj. shall be held on Sept. 4,1973.Stewart, J. (see amendment)
73	**Filed Plaintiff's Reply Memo Dated 6-29-73**
73	**Filed Letter of Shea Gould Climenko & Kramer to Judge Stewart dated June 29,73**
73	**Filed Letter of Hannock, Weisman, Stern & Besser to Judge Steward dated 6-29-73**
73	**Filed Letter of David M. Butowsky to Judge Stewart dated 7-2-73**
73	**Filed Letter of Hannoch, Weisman, Stern & Besser to Judge Stewart dated 7-17-73**
8-73	Filed notice of entry of order (temporary restraining order) filed 8-3-73
4-73	**Filed Stipulation as to record on appeal.**
31-73	Filed OSC by defts. Fairfield Gen. Corp,Fairfield Aviation Corp. and Skyways Leasing Corp. why an order should not be made directing pltf. to releasae stock certificates,records,etc. ret on Sept. 11,1973 with affdts. of Matt Farley and Eli Hoffman in support of above Wyatt, J.

(over)

PROCEEDINGS

4-73 Filed notice that the record on appeal in this action has been certified and transmitted to the USCA on Sept. 4,1973.

4-73 Filed pltfs. amendment to TRO--Ordered that the TRO dated Aug. 3,1973 of this Court as amended by orders dated Aug. 6,1973,Aug. 8,14,and 22,1973 is contd. as to Andean Credit,SA and AndeanCredit SA aretemp. restrained from taking any action to remove the yacht"Patricia"III from the territiral limits of the US up to Sept. 17,1973,etc. as indicated.So ordered,Stewa

4-73 Filed ORDER that thedeposition of AndeanCredit,SA by Eusebio Morales be taken before a notary public to administer oaths by the laws of the US or State of Florida prior to Sept. 12,1973 ,etc. Stewart, J. m/n

0-73 Filed true copy of TRO filed on Aug. 3, 1973 ordering that deft. Vesco is temporarily restrained from taking any action to remove the yacht Patricia from territorial limits of the US up to Aug.13, 1973,etc.Ward,J. and marshal's return as proof of service upon Capt. of the vessel Patricia by Capt. Boddy on 8-4-73.

-73 Filed true copy of amendment to TRO filed Aug. 7, 1973,and proof of service by Marshal's return served on Merrill Stevens Yacht Basi by Vice Pres. on 8-8-73

73 Filed true copy of OSC and TRO filed June 8,1973 with proof of service, with Marshal's return. Served on:
Corp. Trust Co. by J. Miller on 6-18-73
Frank Beatty by (unable to serve)
Skyways Leasing Corp. by Mrs. Banna on 6-19-73
Richard Clay
Shirley Bailey (unable) 6-25-73
Jack Grady(unable)
Wilbert Snipers on 6-20-73
Alwyn Eisenhower(unable)
Fairfield Aviation Corp. by Mrs Banna on 6-19-73
Fairfield General Corp. byG. Banna on 6-19-73
Ralph Dodd (unable)
Harry Sears(unable)

0-73 Filed true copy addl. summons dated June 14,1973 and proof of service by Marshal's return.

10-73 Filed truecopy of amendment to TRO filed Aug. 7,1973 and proof of service by Marshal's return served on the Capt. of the yacht Patricia by Mrs. Boddy(capts.wife) on 8-8-73

73 Filed pltfs. amended complaint.

-73 Filed stip. and order that the time for deft. Marine Midland Bank to answer complaint is ext. to Oct 5,1973.So ordered, Stewart, J

73 Filed ORDER-ORDERED that the deposition upon oral exam. ofRoland Boddy, Capt. of the yacht Patricia III as a witness be taken before a notary public on Sept. 20,1973 at Miami,Florida,etc. Stewart, J.

3-73 Filed pltfs. undertaking that Alwyn Eisenhauer, deft. undertakes that he will be bound by any and all provisions relating to the Boeing 7-07 aircraft contained in the order of injunction herein dated July 3, 1973 as amended and that he will be bound by any and all provisions relating to said aircraft as may be contained in any furture orders of this Court of stip,etc. as indicated.

(see page -7-)

DATE	PROCEEDINGS
Sept. 13-73	Filed stip. and order that action is dismissed as to deft. Alwyn Eisenhauer and if pltf. should allege that said deft. should violate the terms of the undertaking, deft. subjects him to the jurisdiction of this court for the purpose of determing whether he has violated the terms of the undertaking, etc. as indicated. So ordered, Stewart, J.
Sept.13-73	Filed memo end. on pltfs. amendment to TRO dated Sept. 4, 1973-- The parties having consented that the TRO herein be ext. from Sept. 17, 1973 to and including Sept. 24, 1973, it is hereby, So ordered, Stewart, J.
Sept. 18-73	Filed memo end. on pltfs. amendment to TRO dated Sept. 4, 1973-- The foregoing order is on consent of the parties ext. to and including Oct. 1, 1973. So ordered, Stewart, J.
Sep.12,73	Filed Pltff. Affidavit in Opposition to Motion to Release Corporate records.
Sep.19,73	Filed Pltff. Notice of Deposition, on 9/25/73.
Sep-20-73	Filed pltff's order to show cause why an order should not be made enjoining Andean Credit, S.A. - service by Sep-21-73 -- ret. 9-26-73 at 2 PM in RM 618 -- Stewart, J.
Sep-20-73	Filed pltff's affdvt. of Sheldon D. Camhy in opposition to application of Intervenor Andean Credit, SA.
Sep.21-73	Filed ORDER--ORDERED that pltf. deliver to offices of Stanley and Fisher, on orbefore Sept.26, 1973 all stock certificates cancelled, outstanding and or unissued stock transfer books and ledgers and minutes of meetings of Board of Directors of Fairfield General Corp, Fairfield Aviation Corp. and Skyways Leasing Corp. now in its possession; etc. as indicated. Stewart, J. m//n.
Sep.21,73	Filed Deft. Wilbert J. Snipes ANSWER to the complaint. DMM&S
Sep.21,73	Filed Memorandum of Law in Support of Application for Order to Show Cause.
Sep.25-73	Filed affdt. of Frank B. Holsapple, Jr., for the attys. of Shea, Gould Climenko and Kramer, for pltf. serving the proposed OSC, affdt. of Sheldon D. Camhy and memorandum of law in support of application for an OSC on Christy, Frey, and Christy, attys. for intervenor on Sept. 24, 1973.
Sep.25-73	Filed deposition of Roland Lindsay Boddy taken on Sep.21,1973.
Sep.26-73	Filed letter from deft. Roland Lindsay Boddy with copy of exhibit previously not attached with deposition of said deft. as above.
Sep.Oct.1,73	Filed for Pltff. Request for Entry of Default.
Oct.1,73	Filed Stipulation and order for Defts. Beatty & Snipes extending time to answer to 10/12/73. Stewart, J.
Oct.1,73	Filed Stip. and order for Defts. Beatty and Snipes extending time to answer to 10/12/73, Stewart, J.
Oct.4-73	Filed memo end. on pltf's. amendment to TRO dated Sept. 4, 1973-- The foregoing order on the consent of the parties is ext. to and including Oct. 5, 1973. So ordered, Stewart, J.
Sep.28,73	Filed Transcript and record of proceedings dtd. 8/14/73
Oct.5,73	Filed Order for Extension of time to answer complaint, Stewart, J.
Oct.5,73	Filed Order and Judgment permanently enjoining deft. Robert L. Vesco as indicated herein. Deft. Robert L. Vesco is required to indemnify plaintiff for all liability to others by reason of the acts alleged in the complaint; further ordered that deft. Vesco is liable to pltff. for all loss, damage cost and expense. Damage, cost and expense be determined by the Court upon a hearing. Hearing to be set down by pltff. upon giving all deft. Vesco 10 days notice by registered mail. After hearing within ~~judt. be amended as indicated, Stewart, J~~ Judgment entered, Clerk.

PROCEEDINGS

73 Filed for Pltff. Preliminary Injunction --- Ordered, thwt intervenor Andean Credit, S.A. a Panamanian corporaion, its agents, successors, attorneys and assigns and all persons claiming through it, be and they hereby are enjoined, pendente lite, from taking any action to remove the yacht "Patricia III" from its present location: and it is further ORDERED, that the parties may submit such further order :and findings of fact and conclusions of law with respect to the relief granted in the within Order as they may deem appropriate, Stewart, J.

3 Filed for Andean Credit, S.A. Notice of Appeal to the U.S.C.A. from the order entered granting pltff. a preliminary injunction. (m/n)

3 Filed Stipulation for Deft. Marine Midland Bank extending time to 11/2/73, Stewart, J

-73 Filed Order Appointing person to serve process, Stewart, J.

73 Filed Stipulation and order extending time to 10/24/73, Stewart, J.

3 Filed Memorandum on behalf of Andean Credit, S.A.

Filed Affidavit of Arthur H. Christy, dated 9-26-73

73 Filed Affidavit of Frederick G. Murray, dated 9-21-73

3 Filed Affidavit of Rudolph C. Moultrie, dated 9-20-73

3 Filed Affidavit of Eusebio A. Morales dated 9-19-73

3 Filed Affiavit of Donalkd B. Aberle, dated 9-21-73

3 Filed Memorandum of Platff International Controls Corp. in support of TR Preliminary Injunction

73 Filed Transcript of proceedings dated 9-4-73

73 Filed " " " " 9-13-73

73 Filed " " " " 9-13-73

Filed " " " " 9-14-73

73 Filed " " " " 9-26-73

73 Filed " " " " 10-2-73

73 Filed " " " " 10-3-73

Filed " " " " 10-4-73

Filed " " " " 10-5-73

Filed memo. endorsed of counsel stipulating to transmit the attached unsigned order to h as part of the record on appeal.

Filed Affidavit of Virgil Robert Coakley, dated 9-27-73.

Filed stip. and order ext. time for deft. Wilbert J. Snipes to answer the amended complaint to Nov-12-73 -- Stewart, J.

Filed stip. and order ext. time for deft. Frank G. Beatty to answer to NOv-12-73- Stewart, J.

Filed stip. and order ext. time for deft. Marine Midland Bank to answer to Nov-30-73 -- Stewart, J.

3 Filed findings of fact and conculsions of law on motion for a preliminary injunction against Andean Credit, SA with respect to the Yacht "Patricia III". Stewart, J. m/n

3 Filed ORDER--ORDERED that intervenor Andean Credit, SA is enjoined, pendente from moving the vessell "Patricia III" from its present location; etc. as indicated. Stewart, J. m/n

Filed Stipulation and order extending time to answer to Nov. 30, 1973 - Stewart, J. (of Deft. Frank Beatty)

Filed Stipulation and order that the time of Deft. Wilbert J. Snipes to answer be extend to 11/30/73 - Stewart, J.

Filed Consent Order extending time to answer complaint to 11/15/73 - Stewart, J.

Filed copy of transcript of record of proceedings dtd: August 18-73.

Filed stipulation excluding certain documents from transmission to the U.S.C.A.

Filed stip. and order that the time of deft. Marine Midland Bank to answer complaint is ext. to Dec. 28, 1973. So ordered, Stewart, J.

(see Pg 9)

73-2518 pg. 9 Stewart J.

DATE	PROCEEDINGS
/5/73	Filed transcript of record of proceedings, dated June 18, 1973
/5/73	Filed transcript of record of proceedings, dated Sept 26, 1973
	Filed transcript of record of proceedings, dated June 21, 1973
/6/73	Filed transcript of record of proceedings, dated Oct. 2, 3, 4, 5, 1973.
c.7-73	Filed stip. and order that the time of deft. Frank G. Beatty to answer complaint is ext. to Dec. 31,1973. So ordered,Stewart,J.
.7-73	Filed stip. and order that the time of deft. Wilbert J. Snipes to answe the amendec omplaint is ext. to Dec. 31,1973. So ordered, Stewart
.13-73	Filed consent order modifying preliminary injunction.ORDERED that the preliminary injunction herein dated July 3, 1973 and filed July 5,1973 and as heretofore amended,be and the same hereby is further amended and modified as follows(as indicated).Stewart, J.
c.20-73	Filed ORDER modifying preliminary injunction(as indicated),Stewart,J. m/n (w/jud'g)
.2-74	Filed stip. and order that the time of deft. Marine Midland Bank to answer complaint is ext. to Jan.25,1974. So ordered, Stewart,J.
.4-74	Filed ORDER modifying preliminary injunction dated July 3,1973 and file July 5,1973 is amended,etc as indicated. Stewart,J. m/n
24 74	Filed stip. and order that the time of deft. Vesco and Co.,Inc. to to answer amended complaint is ext. to Jan. 21,1974.Stewart,J.
.28-74	Filed Order modifying preliminary injunction--ORDERED that the preliminary injunction dated July 3,1973 and filed on July 5,1973 as amended by order of this Court filed Dec.20,1973 is amended and modified as indicated. Stewart, J. m/n
n.7-74	Filed affdt. byPltf. of Joseph A. Bondi. (see below)
.17-74	Filed consent order modifying prelimary injuction--ORDERED that the preliminary injunction dated July 3, 1973 and filed July 5, 1973 is amended and modified as follows: Shanley and Fisher,Esqs. to disburse from such funds as it holds, the sum of $72,000 to Skyw Leasing Corp. for use by Skyways Leasing Corp. in payment of the insurance premium onthe Boeing 707 aircraft. Stewart, J.
28-74	Filed stip. and order that the time of deft. Marine Midland Bank to answer complaint is ext. to Feb 22, 1974. Soordered, Stewart, J.
29-74	Filed stip. & order that the time of deft. Vesco & Co.,Inc. to answer amended complaint is ext. to Feb. 5, 1974.Stewart,J.
1-74	Filed consent order modifying preliminary injuction dated July 3, 1973 and filed July 5, 1973 as indicated. Stewart, J.
6-74	Filed stip. and order that the time of deft. Vesco and Co.,Inc. to answe amended complaint is ext. to Feb. 12, 1974. Gagliardi,J.
.31-74	Filed pltfs. affdt. of C. Leonard Gordon in support of application for an order authorizing any memeber of the firm of Gowling and Henderson to effect service of process upon the deft. IOS,Ltd.
7-74	Filed affdt. of Joseph A. Bondi that he served summons and amended complaint upon: Norman LeBlanc by Miss Russell on 10/22/73 Columbus Trust Co.,Ltd. by Frederick Murray on 10/23/74 Butlers Bank Ltd.(now known as Who Holdings,Ltd.) by Miss Knowles on 10/23/73 Allan J. Butler by (maid) on 10/23/73 Bahamas Commonwealth Bank by receptionist on 10/24/73 International Bancorp by receptionist on 10/24/73 Kilmorey Investments,Ltd. by receptionist on 10/24/73

	PROCEEDINGS
	IOS,Ltd. byreceptionist on 10/24/73
	Value Capital Ltd. by receptionist on 10/24/73
	Global Holdings,Ltd. by receptionist on 10/24/73
	Global Financial Ltd. by receptionist on 10/24/73
	Robert L. Vesco by mail on 10/25/73
	Gilbert R. J. Straub by mail on 10/25/73
-74	Filed Pltff. Notice of Deposition of Marvin Hoffman on 2/18/74 at 10:00 A.M.
-74	Filed for Pltff. Notice of Deposition of Joel Grady on 2/14/74 for oral examination.
-74	Filed pltfs affdvt. and ORDER TO SHOW CAUSE why an order should not be made modifying the order of preliminary injunction. Ordered that pending the determination of the instant application, this Court's order of preliminary injunction is modified as indicated. - ret. 2-15-74 at 9 AM in Room 2602 - Gurfein, J.
13-74	Filed for Deft. ANSWER to Amended Complaint
19-74	Filed JUDGMENT--ORDERED AND DECREED that pltf. have judgment against deft. Value Capital Ltd. as demanded in the complaint;ORDERED AND DECREED that deft.Value Capital Ltd. be and is liable to pltf. for all loss, damage,cost and expense arising from the acts alleged in Count I of the complaint and that the amt. of said loss be determined by the Court upon an open hearing to be set down and held on a day designated by pltf. upon the pltf. giving deft. Value Capital Ltd. 10 days notice of said hearing by registered or certified mail at PO Box 4815,Nassau,The Bahamas,etc. as indica Stewart, J. m/n Judgment entered Clerk. Entered on docket 2/20/74.
9-74	Filed JUDGMENT BY DEFAULT--ORDERED AND DECREED that pltf. have judgment against deft. Bahamas Commonwealth Bank as demanded in the compla Ordered that deft. Bahamas Commonwealth Bank be and is liable to the pltf. for damages in the amt. of$500,000 together with interest of the acts alleged in Count XI of the complaint;ORDERED that deft Bahamas Commonwealth Bank is liable to pltf. for all loss,damage, cost and expense arising from the acts alleged in Count I of the complaint and that the amt. of said loss be determined by the Cour upon a hearing to be set down and held on a day designated by pltf upon the pltf. giving the deft. Bahamas Commonwealth Bank 10 days notice of said hearing by registered or certified mail at PO Box N3909,Nassau,The Bahamas,etc. as indicated. Stewart, J. m/n Judgme Entered Clerk Entered on docket 2/20/74.
20-74	Filed intervenor Andean Credit,S.A. affdt. of Arthur H. Christy in support of theirapplication to the court pursuant to Rule 65(c) of FRCP to require pltf. to post security for the detention of the yacht Patricia III in accordance with an order of prel. inj. issue on Nov.9,1973 by this court.
20-74	Filed intervenor Andean Credit SA memorandum of law.
-74	Filed ORDER MODIFYING PRELIMINARYINJUNCTION--ORDERED that the order of pr inj. of this court dated Nov.9,1973 is modified to the extent indicat ORDERED that the address recited in the order of Prel. Inj. dated Nov as the present location of the yacht Patricia III be changed from Mer Stevens Dry Dock at 1270 N.W.11th St,Miami,Florida to Laudania Ocean Terminal,750 N.E. 7thAve,Dania,Florida,etc. as indicated. m/n Stewart, J.
8-74	Filed stip. and order that the time of deft. Marine Midland Bank to answer complaintis ext. to March 22,1974. So ordered, Stewart,J.

(Case Pg 11)

DATE	PROCEEDINGS
.27-74	Filed affdt. of service by Eduard Van Bemmel(behalf of defts. by Gowling and Henderson,Ottawa Agents for their solicitors) that on Feb. 15.1974 he served personally Jean Romeo Lajois with a true copy of the order appointing person to serve process the affdt. by C. L. Gordon and the amended complaint.
5-74	Filed pltfs. OSC--ORDERED that intervenor Andean Credit,SA show cause in Rm.2602 on March 6,1974 at 4:30pm why an order should not be entered herein further modifying the order of prel. injunction dated Nov. 9,1973;Ordered that service of a copy of this order and supporting papers upon Christy Frey andChristy,counsel for interventor Andean Credit SA on or before March 5, 1974 at 2pm. Stewart, J.
.6-74	Filed stip. and order that the time of deft. Wilbert J. Snipes to answer amended complaint is ext. to March 31,1974. So ordered, Stewart, J.
.6-74	Filed stip. and order that the time of deft. Frank G. Beatty to answer complaint is ext. to March 31,1974.
.7-74	Filed DEFAULT JUDGMENT-- ORDERED that pltf. have judgment against deft. Columbus Trust Co.,Ltd as demanded in the complaint,etc. as indicated. Stewart, J. m/n Judgment entered Clerk. entered on docket 3/11/74.
20-74	Filed ORDER--ORDERED that the order of preliminary injunction dated Nov.9,1973 is modified to the extent indicated herein; that ICC shall file with this Court a bond in the sum of $50,000 which good and sufficient surety for payment of such costs and damages as may be incurred or suffered by Andean;that ICC shall within 60 days from the date hereof take appropriate steps to bring on before the Court an inquest for the purpose of reducing to a liquidated amt. the default jdgt. entered against deft. Vesco on Oct.5,1973. So ordered,Stewart,J m/n
26-74	Filed stip. and order that the time for deft. Marine Midland Bank to answer complaint is ext. to April 19,1974. So ordered, Stewart,J.
4-74	Filed pltfs. OSC--Ordered that intervenor andean credit SA show cause on April 4,1974 at 9:30am in Rm.2602 why an order should not be made modifying court's order of March 20,1974 which order in turnmodified this Court's order of prel. inj. dated Nov. 9,1973 etc;that the time for ICC to file a bond is ext. from Apr.5,1974 to April 10,1974 and further ordered that service of a copy of this order be served upon counsel for intervenor Andean Credit on or before April 3,1974 by 5pm.Stewart,J.
,4-74	Filed ORDER--ORDERED that this Court's order dated March 20,1974 is modified to the extend herein and ORDERED that the bond or undertaking referred to in the 3rd decretal paragraph of said March 20,1974 order may be secured by the deposit of cash, a certified check drawn tothe order of the clerk,USDC,SDNY orbonds of the US Govt or a combination thereof ,etc. as indicated. Stewart, J. m/n
9-74	Filed stip. and order ext. time for deft. Frank G. Beatty to answer to 4-30-74 -- Stewart, J.
9-74	Filed stip. and order ect. time for deft. Snipes to answer to 4-30-74. -- Stewart, J.
4-74	Filed intervenor Andean Credit,SA notice of appeal to the USCA from part of the order entered on March 20,1974 requiring pltf. to file with this court a bond in the sum of $50,000.(copies mailed).

(over)

PROCEEDINGS

74 Filed ORDER--ORDERED that the deposit by ICC of said 5 3/4% US Treasury Notes maturity Nov.15,1974 in the total amt. of $50,000 and a certified check in the amount of $700. as security for the bond directed by this Court's March 20,1974 order is approved and that the Clerk of the Court shall accept said US Treasury Notes and certified check as security for the aforesaid bond. Stewart, J.m/n

-74 Rec'd. from ICC a check in the sum of $700.00 and deposited the same in the Registry of the Court;also rec'd. bonds(5) Five treasury note in the face amt. of $10,000--with 2 coupons attached to each bond maturing bonds# as follows: 42828
68012
73750
73751
75292(envelope#1510 Bond Book)
as per Cahiers office.

-74 Filed pltfs. notice of appeal to the USCA from the part of the order en on March 20,1974 which required pltf. to file with this Court a bond in the sum of $50,000.(copies mailed)

-74 Filed stip. and order that the time of deft. Marine Midland Bank to answer complaint is ext.to May 17,1974. So ordered, Stewart,J.

10-74 Filed pltfs, undertaking on preliminary injunction.

74 Filed pltfs. affdt. and notice of motion for partial inquest for the purpose of making a partial determi nation of pltfs. loss,damge and expens which deft. Robert Vesco has found to be liable to pltfs.judgment entered on Oct.5,1973 ret. on: May 14,1974.

-74 Filed Receivers affdvt. and order to show cause that any person receivin notice thereof and desires to object to the order annexed hereto (permitting receiver to intervene) appear and show cause in romm 705 on 5-14-74 at 4 PM. -- Stewart, J.

74 Filed stip. and order that the time of deft. Frank Beatty to answer comp. is ext. to May 31, 1974.So ordered, Stewart, J.

-74 Filed stip. and order that the tme of deft. Wilbert Snips to answer amended complaint is ext. to May 31, 1974. So ordered,Stewart, J.

74 Filed stip. and order that action is dismissed to the following defts. with prejudcie and without costs:Fairfield General Corp.
Fairfield Aviation Corp.
Skyways Leasing Corp. So ordered,Stewart,J

-74 Filed ORDER--ORDERED that said receiver John K. Schemmer is permitted to intervene in this action.Stewart, J. m/n

74 Filed stip. and order that the time of deft. Marine Midland Bank to answe complaint is ext. to June 14,1974. So ordered, Stewart, J.

-74 Filed mandate with true copy of decision of the USCA--Ordered that the orders of said District Court be & they hereby are affirmed as modified as to appellants, Fairfield,General Corp. et al & as to appellant Vesco & Co.,Inc. but as to appellant Andean Credit SA said order be & it hereby is affirmed and that the action as to Andean Credit SA is remanded to said

(see page -13)

DATE	PROCEEDINGS
	District Court for further proceedings in accordance with the opinion of this court with costs to be taxed against the appellants. Clerk m/n
21-74	Filed order--ORDERED that a summons and the intervenor complaint of receiver John K. Schemmer shall be served upon defts. Robert Vesco, Norman LeBlanc and Richard Clay by personal service in the Bahamas by Fred Seymour, Deputy Provost Marshal of the Bahamas or any orther person lawfully designated the the Provost Marshal of the Bahamas or by registered, RRR as indicated. Stewart, J. m/n
ay 21-74	Filed stip. and order that the time of deft. IOS is ext. to June 11, 1974 to answer the complaint. So ordered, Stewart, J.
y 28-74	Filed ORDER--ORDERED that this Court's May 21, 1974 order regarding the service of summonses and copies of the intervenor complaint of John K. Schemmer, Receiver upon certain defts. is modified by substituting the receiver's amended intervenor complaint for said receiver's intervenor complaint. Stewart, J. m/n
30-74	Filed receiver John K. Schemmer notice of filing of true copy of the amended intervenor compalit which was filed in theclerks office on May 24, 1974.
y 20-74	Filed receiver John K. Schemmer notice of entry of a copy of an order filed and entered on May 16, 1974.
y 20-74	Filed intervenor complaint by Andean Credit and John K. Schemmer. (addtl. summons issued)
22-74	Filed receiver, John K. Schemmer notice of filing a true copy of the intervenor complaint which was filed in the Clerk's office on May 20, 1974.
24-74	Filed intervenor John K. Schemmer amended intervenor complaint.
17-74	Filed stip. and order that the time ofdeft. I.O.S.Ltd. to answer complaint is ext. to July 11, 1974. So ordered, Stewart, J.
n 18-74	Filed stip. and order that the time ofdeft. Marine Midland Bank to ans complaintis ext. to July 12, 1974. So ordered, Stewart, J.
21-74	Filed stip. and order that the time of pltf. to answer the amended complaint of intervenor John Schemmer is ext. to June 28, 1974. So ordered, Stewart, J.
n- 6-74	Filed Receiver's affdvt. of service re additional summons and amended Intervenor Complaint of Receiver - served: Robert L. Vesco, Norman Le Blanc, Global Financial Ltd., Value Capital Ltd., International Bancorp., Bahamas Commonwealth Bank and Columbus Trust Co. Ltd. --- all by registered mail on 5-28-74 to addresses listed herein and additional summons and Intervenor complaint on Robert L. Vesco and Norman LeBlanc on 6-5-74 by registered mail to addresses indicated herein.
un- 7-74	Filed notice of entry of orders (2) filed on 5-21-74 and 5-28-74.
ul 8-74	Filed stip. and order that the time of dett. Frank Beatty to answer complaint is ext. to July 31, 1974. So ordered, Stewart, J.
l 8-74	Filed stip. and order that the time of dett. Wilbert Snipes to answer amended complaint is ext. to July 31, 1974. Soordered, Stewart, J.
ul 8-74	Filed stip. and order that the time of pltf. to answer amended complaint of intervenor John Schemmer is ext. to July 12, 1974. Soordered, Stewart, J.
ul-12-74	Filed plaintitf's affdvt. and notice of partial Inquest re deft. Vesco - on 6-21-74 at 4 P.M.
-16-74	Filed Transcript of record of proceedings, dated 2-22-74
16-74	Filed Transcript of record of proceedings, dated 5-14-74
-16-74	Filed Transcript of record of proceedings, dated 5-22-74

D. C. 109 Criminal Continuation Sheet

CIV 2518 Stewart, J.

DATE	PROCEEDINGS
12-74	Filed JUDGMENT and order #74,584 that plaintiff recover from deft. Robert L. Vesco the sum of $2,188,354.93 plus interest - total of $2,422,466.72 and that plaintiff have execution thereof. Ordered that pltf. shall have the right to prove additional loss, etc. - amounts to be determined by the Court upon add. hearing or hearings to be held as provided for in Oct. 5-73 judgment. - Stewart, J. -- Judgment entered - Clerk. m/n
1[illegible]-74	Filed stip. and order that the time of deft. Marine Midland Bank to answer is ext. to 2-9-74. -- Stewart, J.
	Filed Transcript of record of proceedings, dated Feb 14 1973
25-74	Filed stip and order that the time of deft. IOS,Ltd. to answer complaint is ext. to Aug. 12,1974.Soordered,Stewart,J.
8-74	Filed order--ORDERED that Mark J. Freiberg is authorized to effect the s of process in this action on deft. Shirley Bailey. Stewart,J. m/n
8-74	Filed pltts. answer to amended complaint of intervenor John Schemmer.
5-74	Filedpltfs. affdt. of Mark Freiberg that he served a copy of the summons and complaint upon deft. Shirley Bailey,personally and by mail.
2-74	Filed pltfs. restraining notice to garnishee,re:Bahamas Commonwealth Banl judgment debtor,etc. as indicated.
9-74	Filed stip. and order that the time of deft. IOS,Ltd. to answer complain is ext. to Sept. 11,1974.So ordered,Stewart,J.
3-74	Filed stip. and order that the time ofedeft. Marine Midland Bank to answer complaint is ext. to Sept. 6,1974. So ordered, Owen,J.
29-74	Filed consent order that the time ofdeft. Shirley Bailey to answer the amended complaint without waiver of any of herdefenses is ext.to Sept. 23,1974. Stewart,J.
28-74	Filed transcript of record of proceedings dated July 12,1974.
23-74	Filed stip. and order that the time of deft. Wilbert Snipes to answer amended complaint is ext. to Sept. 30,1974. So ordered,Stewart,J.
23-74	Filed stip. and order that the time of deft. Frank Beatty to answer complaint is ext. to Sept. 30,1974. So ordered,Stewart,J.
6-74	Filed reciever John Schemmer auppliemental affdt. of service by Charles Hance.
6-74	Filed reciever John Schemmer affdt. of service by Fred Seylmour.
6-74	Filed receiver John Schemmer affdt. of service by Fred Seymour.
74	Filed pltfs. affdt. and notice of motion for an order directing that the yacht Patricia III presently being held and detained to Court's order of Nov.9,1973 be moved to NY State and to be sold at a public auction, etc. ret.on:Oct. 24,1974, in Rm.318.
-74	Filed stip. and order that the time of deft. Frank Beatty to answer complaint is ext. to Oct. 31,1974 .So ordered,Stewart,J.
-74	Filed stip. and order that the time of deft. Wilbert Snipes to answer amended complaint is ext. to Oct. 31,1974. So ordered,Stewart,J.
-74	Filed stip. and order that the time ofdeft. Marine Midland Bank to answer complaint is ext. to Nov. 1,1974.So ordered,Stewart,J.
-74	Filed receiver,John K. Schemmer affdt. in opposition of Bernard Cedarbaun
-74	Filed deft.Shirley Bailey notice that she is represented by Layton and Sh 50 Rockefeller Plaza,NYC 10020
-74	Filed order that the Clerk is directed to deliever to ICC or its attorney US Treasury Notes as indicated herein; deposit by ICC Treasury Notes as security for the bond directed by this court's order of 3-20-74 in the sum of $50,000. is approved. The Clerk shall accept said 5-3/4% U.S. Treas. Notes, maturity 2-15-74 as security for said bond. -- Stewart, J. m/n (s.p.o.)

(see Pg. -15-)

Civil Docket Continuation

PROCEEDINGS	Date Order or Judgment Note
4 Filed pltfs. supplemental affdt. of service of David Butowsky.	
4Filed JUDGMENT #74,971---ORDERED that the clerk ofthecourt enter mjugment against deft. Bahamas Commonwealth Bank in the amt. of $500,000 with interest in the money judgment book of this court nunc pro tunc as of Feb. 19,1974.Stewart,J. m/n judgment entered, clerk entered on docket 12/18/74	
[illegible]	
Filed stip. and order ext. deft. Beatty's time to answer to 1-31-75- Stewart, J.	
Filed stip. and order ext. deft. Wilbert J. Snipes time to answer to 1-31-75 -- Stewart, J.	
Memo of deposit in the registry of the Court on order filed 11-15-74: received bonds valued at $50,000. and placed same in Vault Mfg. T.T. Co.	
Filed stip. and order that the time of deft. Marine Midland Bank to answer is ext. to 2-28-75 -- Stewart, J.	
Filed stip and order extending deft. Wilbert J. Snipes time to answer amended complaint to 2-28-75. Stewart, J.	
Filed stip and order extending deft Frank G. Beatty time to answer or make motion to 2-28-75 Stewart, J.	
Filed order directing Clerk to deliver to ICC US Treasury Notes, 5-3/4%, Maturity 2-15-75, payable to bearer withcoupon attached heretofore dlvd. to the clerk on 11-22-74, serial numbers as indicated (5) in the total amount of $50,000. ordered that deposit by ICC of 5-7/8% US Treasuary Notes, maturity 8-15-75 in the total face value of $50,000. in place of the above mentioned Treas. Notes, maturity 2-15-75 as security for the bond as indicated, is approved, clerk to accept... said Treas. Notes maturity 8-15-75--Stewart, J.	
Filed memo. deposit ih the Registry of the Court--endorsed on above order-- Rec the above list Notes 57923, 57924, 57925, 57926, & 13121 With coupons	
Rec'f 5 Treasury Bills Face amount of $10,000 w/ coupons attached 57199, 57200, 57201, 57202, 57204.	
Filed stip. and order ext. deft. Wilbert J. Snipes time to answer to 3-31-75 --Stewart, J.	
Filed stip. and order ext. deft. Frank G. Beatty time to answer to 3-31-75--- Stewart, J.	
Filed stip. and order ext. deft. Marine Midland Bank time to answer to 3-28-75 --Stewart, J.	
Filed stip. and order ext. deft. Frank G. Beatty time to answer to 4-30-75 --Stewart, J.	
Filed stip. and order ext. deft, Wilbert J. Snipes time to answer to 4-30-75 --Stewart, J.	
Filed Default Judgment and Order that the Clerk of the Court enter judgment against deft Bahamas Commonwealth Bank in the sum of $500,000.00 with interest in the money judgment book of this Court nun pro tunc as of 2-19-74--Stewart, J Judgment entered 3-31-75--clerk m/n	
Filed stip. and order ext. deft. Marine Midland Bank time to answer complaint to 4-25-75--Stewart, J.	
Filed prehearing memorandum of deft Vesco & Co. Inc.	
Filed pltf. pre-hearing memornadum	
Filed ORDER in re. to a judgment entered against Robert L. Vesco on Oct. 5, 1973 and one entered on 7-18-74. Ordered, that both of siad judg. are and were at the times when they were entered final judg. of this Court; and it is further Ordered, that no further action of this court or any other court is required	

(con't on next page)

PROCEEDINGS	Date Order Judgment No
before the judg. entered July 18, 1974 may be presented for execution to any court of general jurisdiction in the U.S. or any foreign court that recognizes the validity of judg. and it is further Ordered, that the judg. entered July 18. 1974 and the pltf's right to have execution thereunder for the amount of $2,188,354.93 are and will be in no way affected by the pltf's right to prove and to recover other amounts pursuant to the judg. entered Oct. 5, 1973--Stewart, J. m/n	
Filed stip. and order ext. deft. Marine Midland Bank time to answer to 5-30-75 --Stewart, J.	
Filed stip. and order that the time of deft. Wilbert Snipes to answer the amended complaint is ext. to May 31,1975. So ordered,Stewart,J.	
Filed stip. and order that the time of deft. Frank Beatty to answer the complaint is ext. to May 31,1975. So ordered,Stewart,J.	
Filed pltf. affdvt. and Order to Show Cause that Intervenors show cause why an order should not be entered modifying the order of preliminary injunction of this Court date 11-9-73 ret. 6-6-75 in Rm. 2602 at 10:30 a.m. personal service rendered on or before May 28, 1975 5:0.m.--Stewart, J.	
Filed Counter Order that pltf. appear for deposition on or before 6-16-75 with pltf. right to object to any question at deposition --Stewart, J.	
Filed affdvt. of Stella L. Scott of service by mail served Order to Show Cause and affdvt. of Daniel L. Carroll on Christy Frey & Christy Dornbush Mensch Mandelstam & Schwartz atty's for defts Sullivan & Cromwell atty. for deft Marine Midland Bank Carter Ledyard & Milburn atty for J.K. Schemmer	
Filed affdvt. of service of Harry J. Chororos on May 21st, 1975 he served Order to Show Cause and accompanying affdvt. of Daniel L Carroll by personally del. upon Haunoch Weisman Stern & Besser 744 Broad St. Newark, NJ	
Filed affdvt. of service of Louis Brander on 5-20-75 he served Order to Show Cause and accompanying affdvt. of Daniel L. Carroll upon Robert L. Vesco by mail 170 Denville Rd. Boonton Township .J. #115509	
Filed affdvt. of service of Stella L. Scott that on5-20-75 she served by certified mail copies of the same on R. L. Vesco 170 Denville Rd. Boonton Township, N.J. #020760(all under the same cover)	
Filed affdvt. of Daniel L. Carrol submit to bring to the attention of the court some additional facts in connection with ICC's application brought on by order to show cause	
Filed pltf. memorandum of law in support of motion.	
Filedstip. and order ext. deft. Marine Midland Bank time to answe to 6-27-75-- --Stewart, J.	
Filed pltf. affdvt. and order to show cause Ordered that defts Robert L. Vesco & Co. Inc. and any other party having an interest in the subj. matter show cause why an order should not be entered herein appointing a receiver etc. ret. 5-28-75 10:30 in Rm. 2602 personal service rendered on or before 5-21-75--Stewart, J.	
Filed Order appointing a receiver that the determination of pltf's application withih with respect to Vesco & Co., Inc. be and the same is held in abeyance pending the holding of a hearing solely for the purpose of determining whether pltf is entitled to enforce its judgment against R. L. Vesco proceeding against the stock of International Controls Corp. held of record by Vesco & Co., Inc. and Ordered, that the hearing provided for hereinbe held on 6-30-75 at 10:00a.m. --Stewart, J. m/n	
Filed affdvt. of service by mail of Louis Brander served Robert L. Vesco with Memo. of law Brace Ridge Rd. Nassau, Bahamas # 366150 #366151	

PROCEEDINGS

-75 Filed affdvt. of service by mail of Irving A. Barbash that he served Memorandum of law upon Robert L. Vesco 170 Denville Rd. Boonton Township, N.F. on 5-23-75 # 115510

-75 Filed affdvt. of of service by mail of Stella L. Scott served-- Memorandum of law upon all partied listed herein on 5-23-75

-75 Filed affdvt. of Stella L. Scott that she served memorandum of law upon upon Robert L. Vesco P.O. Box N-8232, Nassau, Bahamas on 5-23-75

-75 Filed affdvt. of service by mail of Stella L. Scott that she served-- Suppl. affdvt. on all parties herin on 5-30-75

-75 Filed affdvt. of servic by mail of Irving A. Barbash that he served-- suppl. affdvt upon Robert L. Vesco 170 Denville Rd. Booton Township, N.J. #115511 R. L. Vesco Brace Ridge Rd. Nassau, Bahamas and R. L. Vesco P. O. Box N-8232 #366825 #366826. (all under same cover)

-75 Filed stip. and order ext. deft. Wilbert J. Snipes time to answer to the amended complaint to 7-31-75--Stewart, J.

1-75 Filed sitp. and order ext. deft Frank G. Beatty time to answer to 7-31-75 --Stewart, J.

-75 Filed stip. and order ext deft. Marine Midland Bank time to answer to 7-25-75 --Stewart, J.

-75 Filed Order that the Master of the yacht "Patricia Hill" now know as "Joya Oceania" is directed to deliver possession of said yacht to David M. Butowsky; ect. and ordered that said David M. Butowsky is directed on behalf of this court to request the appropriate authorities in the Bahamas including the appropriate court in the Bahamas to take all appropriate measure to assist him in regaining possession of said yacht and returning it to the territorial limits of the United States--Stewart, J.

75 Filed pltfs. affdvt and Order to Show Cause Ordered, that Andean Credit, S.A. et. al. show cause in Rm. 2704 at 11:00a.m. on 7-11-75 why an order should not be made and entered pursuant to rule 42

-75 Filed stip. and order ext. deft. Marine Midland Bank time to answer to 8-9-75-- Stewart, J.

-75 Filed stip. and order that the time of deft. Frank Beatty to answer complaint(amended is ext. to Aug. 31,1975. So ordered,Stewart,J.

-75 Filed stip. and order that the time of deft. Wilbert Snipes to answelr amended complaint is ext. to Aug. 31,1975. So ordered,Stewart,J.

-75 [illegible] June 6, 1975

-75 Filed pltf. affdvt. and order to show cause that Intervenor show cause why an order should not be made and entered pursuant to rule 65 ret. on 9-9-75 Rm. 2602 at 9:30a.m. Personal service to be rendered on or before 8-26-75 --Owen, J.

-75 Filed Transcript of record of proceedings, dated June 30, 1975

2-75 Filed deft Vesco & Co., Inc.'s brief in opposition to order to show cause

2-75 Filed pltf. Post-hearing memorandum

2-75 Filed pltf. memorandum of law in support of motion

3-75 Filed stip. and order ext. deft. Marine Midland Bank time to answer to the complaint to 9-29-75--Stewart, J.

3-75 Filed stip. and order ext. deft. Frank G. Beatty time to answer to the amended complaint to 9-30-75--Stewart, J.

-75 Filed stip. and order ext. deft Wilbert J. Snipes time to answer the amended complaint to 9-30-75--Stewart, J.

5-75 Filed Order appointing Andrew Maloney, Esq. of the law firm of Maloney, Vivians as receiver --Stewart, J. m/n

-75 Filed deft. post-hearing memorandum

(continued on page 18-)

DATE	PROCEEDINGS
-75	Filed memorandum of Vesco & Co
-75	Filed [illegible] affdvt. in opposition to an application by pltf. brought on by an Order to show Cause (by Intervenor Andean Credit)
-75	Filed Order that no further action of this court or any other court is required before judgment entered 7-16-75 for execution to any court of jurisdiction in the U.S. or any foreign court, the judgment entered 7-16-75 and the pltf's right to have execution thereunder for the amount of $2,188,354.93, are and will be in no way affdcted by pltf's right to prove and to recover other amounts pursuant to the judgment entered 10-5-73; and that hereinabove order shall succeed the Order signed 4-3-75 and filed by the Clerk of the Court 4-4-75--Stewart, J. m/n
-75	Filed MEMORANDUM # 42991 Pltf. motion for an order permitting it to satify some of its outstanding default judgt. against Vesco through certain assets of "Vesco & Co". We think that pltf. ICC has demonstrated that the IEC. of Vesco & CO. was not for a valid corporate purpose, but rather was an attempt by Vesco to immunize his assets from liability while maintaining personal control over and use of those assets.. In view of this finding, we find it desirabce to appoint a receiver to collect those assets. dofts. Vesco and Vesco & Co. are directed t turn over all cert. of shares of ICC and Fairfield Gen. Corp. Stock in their possession, custody or control, to the receiver within 20 days of appointment, whether cert. are within the U.S. However, we modify this order in accordance with Ross. deft. Vesco, a non-resident of the U.S. shall first apply for such official consent to such transfer as may be required in order to provide agains opposibility that any action ordered..will violate foreign law Pltf. has additionally request that this court issue an order permittin ICC to cancel the stock held by Vesco and Vesco & Co. We defer decision on the right of ICC as judgment creditor to seek cancellation of stock held by Vesco and Vesco & Co. as judgment debtor until such time as it may become necessary to decide So Ordered--Stewart, J. m/n (received in unit -5- for docketing date 9-18-75)
-25	Filed Transcript of record of proceedings, dated June 30, 1975 (copy)
-25	Filed Transcript of record of proceedings, dated July 15, 1975
-75	Filed deft. Vesco & Co., Inc notice of appeal to the U.S.C.A. for Second Circuit from the whole opinion and order of 8-22-75 mailed copy to Shea, Gould Climenko, Kramar & Casey
22-75	Filed Order pltf. having moved by order to show cause dated 5-20-75 for sequestration pursuant to rule 69
2-75	Filed Order that Andrew Maloney shall collect and, sell the following property in which deft Robert L. Vesco has interest to all shares of common stock of International Controls Corp. in possesion or control of deft. R. L. Vesco and by deft. Vesco & Co. Inc. etc. as indicated herein and directing dofts to deliver shares to be cancelled and reissued to receiver Andrew Maloney if deft. fails to deliver as opposed, a certified copy of the within order shall be mailed to deft Robert L. Vesco on or before 9-26-75 by cert. mail ret. receipt requested, addressed to deft R. L. Vesco at 170 Danville Rd. Booton Township, NY.J. 07005 and at Bruce Rd. Nassau, Bahamas, a certi. copy of the within order shall be mailed to Trident Bank Ltd. on or before 9-26-75 at Trident Bank Ltd. P. O. box 4815 Nassau, Bahamas and that the decision i deferred on its remainder of the relief requested by pltf. on the instant application, and pltf. shall have the right to make further application to this court for such relief .--Stewart, J. m/n (copies will be mailed by pltf atty's)
-75	Filed stip. and order ext. deft Wilbert J. Snipes time to answer the amended complaint to 10-31-75--Stewart, J. (continued on page-19-)

v. Civil Docket Continuation

	PROCEEDINGS	Date Order or Judgment Not
5	Filed stip. and order ext. deft Frank G. Beatty time to answer to the amended complaint to 10-31-75--Stewart, J.	
	Filed stip. and order ext. deft. Marine Midland Bank time to answer to 10-31-75	
	Filed Order that pltf. International Controsl Corp. having moved this Court by Order to show causer dated 8-25-75, pursuant to rule 65 . Motion granted, pltf. ordered that pltf. post a bond in the sum of $50,000 in connection with this court's 11-9-73 preliminary injct. order is vacated. The under taking filed by int. Controls Corp. on 4-10-75 is vacated and that the Clerk of the Court is directed to deliver to pltf. or atty's the $700 in cash heretofore delivered to to Int. Controls Corp. and the following US Treasury notes five/ and seven/eights percent, maturity 8-15-75 payable to bearer which are presently being held by the clerk of the Court as security for the bond being vacated herein.--- Stewart, J. m/n	
75	Filed stip. and order ext. deft. Frank G. Beatty time to answer to the complaint to 11-30-75--Stewart, J.	
75	Filed stip. and order ext. deft Wilbert J. Snipes time to answer to 11-30-75---- Stewart, J.	
5	Filed stip. and order ext. deft. Marine Midland Bank time to answer to 11-28-75--- Stewart, J.	
	Filed pltf. notice of taking deposition of taking deposition of deft. Vesco & Co. on 11-18-75.	
5	Filed notice of original record on appeal has been certified and transmitted to the U.S.C.A for the Second Circuit on 11-7-75	
	Filed stip. and order ext. deft. Frank G. Beatty time to answer to 12-31-75--- Stewart, J.	
	Filed stip. and order ext. deft. Wilbert J. Snipes time to answer to the complaint to 12-31-75.--Stewart, J.	
	Filed notice of appearance for deft. Vesco & Co., Inc.	
5	Filed notice of supplemental recor on appeal has been certified and trabsmitted to to the U.S.C.A. on 12-9-75	
	Filed affdvt. of Andrew J. Maloney in re. to certain defalut judgments entered against the deft. dated 10-27-75.	
6	Filed stip. and order ext. deft. Marine Midland Bank time to answer to 1-30-76. --Stewart, J.	
6	Filed stip. and order ext. deft. Wilbert J. Snipes time to answer the amended complaint to 1-31-76--Stewart, J.	
6	Filed stip. and order ext. deft. Frank G. Beatty time to answer to 1-31-76 ----	
6	Filed deft. Movant affdvt. and order to show cause Ordered that pltf. show cause in Rm. 2602 on 1-16-76 at 2:00p.m. why an order should not be entered pursuant to rule 26(c)and 45(d)(2). and that personal to be rendered on or before 1-14-75 at 2:00p.m.	
6	Filed deft Movant memorandum of law in support of motion to quash subpoena	
6	Filed pltff memorandum in opposition to motion of Daniel Vesco to quash subpoena.	
	Filed stip. and order ext. deft. Marine Midland Bank time to answer to 2-27-76 --Gagliardi, J.	
6	Filed stip. and order ext. deft. Wilbert J. Snipes time to answer to 2-29-76--- Gagliardi, J.	
76	Filed stip. and order ext. deft. Frank G. Beatty time to answer to 2-29-76-- Gagliardi, J.	
6	Filed stip. and order ext. deft. Wilbert J. Snipes time to answer to 3-31-76--- Stewart, J.	
	Filed stip. and order ext. deft. Frank G. Beatty time to answer to 3-31-76--- Stewart, J.	

PROCEEDINGS	Date Order Judgment No
Filed memo. end. on order to show cause filed 1-14-76 After hearing counsel the motion is denied. Counsel will arrange for a time and place to take the the discovery requested by pltf. and the Court assumes that the convenience of counsel and of the parties will be taken into a account--Stewart, J. m/n	
Filed stip. and order ext. deft. Marine Midland Bank time to answer to 3-26-76---- Stewart J.	
Filed stip. and order ext. deft. Marine Midland Bank time to answer to 4-25-76-- Stewart, J.	
Filed stip. and order ext. deft. Frank G. Beatty time to answer to 4-30-76---- Stewart, J.	
Filed stip. and order ext. deft. Wilbert J. Snipes time to answer to 4-30-76--- Stewart, J.	
Filed deft. Bahamas Commonwealth Bank Ltd. affdvt. and notice of motion for an order pursuant to rule 60(b) to vacate default judgment ret. 4-12-76	
Filed memorandum of law of deft. in support of above motion to open the default judgment.--	
Filed stip. and order withdrawing deft. Bahamas Commonwealth Bank, Ltd. motion to open default without prejudice to its renewal at a later date. --Stewart, J.	
Filed stip. and order ext. deft. Marine Midland Bank time to answer to 5-23-76 ---Stewart, J.	
Filed stip. and order ext. deft. Marine Midland Bank time to answer to 5-28-76-- Stewart, J.	
Filed stip. and order ext. deft. Wilbert J. Snipes time to answer the amended complaint to 5-31-76--Stewart, J.	
Filed stip. and order ext. deft. Frank G. Beatty time to answer the amended complaint to 5-31-76---Stewart, J.	
Filed Transcript of record of proceedings dated 3-10-76	
Filed pltf. affdvt. and ORDER to SHOW CAUSE that defts Robert L. Vesco, Vesco and Co., Inc. show cause on 5-26-76 at 4:00P.M. why an amended judgment should not be entered and that personal service shall be rendered on or before 5-21-76 ----Stewart, J.	
Filed Amended Judgment #74,584. recover of deft. Robert L. Vesco the sum of $ 2,188,354.93 plus interest on said sum at the rate of % from 3-1-76 or total pltf. shall have a right to prove such additional loss, damage, cost and expense as it has suffered by reason of the claims alleged in the complaint other than those as to which judgment has been granted, the amount of any such additional loss, damage, cost and expense to be determined by the Court upon an additional hearing or hearing to be held as provided for in said 10-5-73 judgment: and that this judgment is entered nunc pro tunc as of 7-12-76-- Stewart, J. Judgment entered on 5-27-76-Clerk m/n (in re. to shares of Fairfield Conaval Corp.)	
Filed affdvt. of service of Order to Show Cause , affdvt. and amended judgment seved upon Hannoch Weisman Stern & Beaser on 5-21-76 by Eve Earley	
Filed transcript of record of proceedings dated 5-26-76	
Filed stip. and order ext. deft. Marine Midland Bank time to answer to 6-25-76--- Stewart, J.	
Filed stip. and order ext. deft. Wilbert J. Snipes time to answer the amended complaint to 6-30-76--Stewart, J.	
Filed stip. and order ext. deft. Frank G. Beatty time to answer to 6-30-76	
Filed true copy of the U.S.C.A. order remanding deft-appellant order of the Dist. Court for further proceedings in accordance with the opinion of this Court	
Filed stip. and order that the time of deft. Frank Beatty to answer amendee complaint is ext. to July 31,1976. So ordered, Stewart,J.	

(see Pg. 21)

Civil Docket Continuation

PROCEEDINGS	Date Order or Judgment Not.
Filed stip. and order that the time of deft. Wilbert Snipes to answer amended compl int is ext. to July 31,1976. So ordered, Stewart,J.	
Filed stip. and order that the time of deft.Marine Midland Bank to answer complaint is ext. to July 30,1976. So ordered, Stewart,J.	
Filed deft. Vesco & Co. Inc notice of appeal to the U.S.C.A for the Second Circuit from the whole of the opinion and order of 8-22-75, and deft. appeals from the amend d judgment of 5-26-76 mailed notice to Shea, Gould, Climenko Kramer & Casey	
Filed Transcript of record of proceedings dated 5-26-76	
Filed stip. and order ext. deft. Marine Midland Bank time to answer to 8-27-76 ---Gagliardi, J.	
Filed stip. and order ext. deft. Frank G. Beatty time to answer to 8-31-76----- Pierce, J.	
Filed stip. and order ext. deft. Wilbert J. Snipes time to answer to 8-31-76---- Pierce, J.	
Filed deft. Vesco & Co., Inc. affdvt. and notice of motion for an order enlarging the period within which it could file its notice of Appeal. ret. 9-9-76	
Filed stip. and order ext. deft. Frank. G. Beatty time to answer to 9-30-76----- Stewart, J.	
Filed stip. and order ext. deft. Wilbert J. Snipes time to answer to 9=10-76=---- Stewart, J.	
Filed pltf. affdvt. in opposition to the motion of Vesco & Co. for an order ext. time	
Filed pltf memorandum in opposition to deft. Vesco & Co. Inc. motion for an order ext. time for filing a notice of motion	
Filed stip. and order ext. deft. Marine Midland Bank time to answer to 9-24-76 --Stewart, J.	
Filed deft. Vesco notice of motion for an order to vacate ret. 9-15-76 on submission	
Filed deft. Vesco memorandum in support of above motion to vacate and reenter order to permit timely appeal	
Filed true copy of U.S..C.A Order that for the appelle to dismis the appeal from U.S. Dist Court is granted m/n	
Filed pltf. affdvt. in opposition to motion of Vesco & Co. to vacate and reenter amended judgment	
Filed stip. and order ext. deft. Marine Midland Bank time to answer 10-25-76--- Stewart, J.	
Filed stip. and order ext. deft. Frank G. Beatty time to answer to 10-31-76-- Stewart, J.	
Filed stip. and order ext. deft/ Wilbert J. Snipes time to answer to 10-31-76 --Stewart, J.	
Filed pltf. memorandum of law in response to issues raised at conference of 10-7-76	
Filed letter of Albert G. Besser in re. to motion to vacate dated to Judge Stewart 9-15	
Filed letter to Judge Stewart in re. to deft. Vesco & Co., Inc. ext. time dated 9-15-76 of Albert G. Besser	
Filed correspondence to Judge Stewart dated 9-20-76 by Sheldon D. Camny in re to judgment against Vesco.	
Filed letter addressed to Judge Stewart by Sheldon D. Canhy dated 10-20-76 in re to the Amended Complaint	
Filed letter addressed to Judge Stewart by Albert G. Besser in re to motion to vacate the May 26, 1976 judgment on the complaint.	
Filed letter addressed to Judge Stewart dated 10-18-76 by Alber G. Besser in re to letter of ICC regarding the memorandum we submitted to the Court on 20-8-76.	

Continued on page -22-

PROCEEDINGS	Date Order or Judgment Noted
Filed letter addressed to Judge Stewart dated 10-1-76 by Albert G. Besser in re to the amended judgment	
Filed letter addressed to Judge Stewart dated 9-30-76 by Daniel L. Carroll in re to to the complaint	
Filed letter addressed to Judge Stewart dated 9-22-76 by Albert G. Besser in re to the complaint being amended.	
Filed letter of Albert G. Besser to addressed to Judge Stewart in re to both motion being considered together on the date fixed for oral argument dated 9-14-76	
Filed letter addressed to Judge Stewart dated 9-9-76 by Albert G. Besser requesting oral argument.	
Filed letter of Albert G. Besser addressed to Judge Stewart dated 9-7-76 in re to in re to oral argument.	
Filed stip. and order ext. deft. Marine Midland Bank time to answer to 11-24-76 --Stewart, J.	
Filed MEMORANDUM deft Vesco seeks to vacate the May 27th Judgment . Motion to vacate the judgment under rule 60 (b) is denied, deft's motion for leave to extend the time in which to file a notice of appeal is denied--Stewart, J. m/n	
Filed stip. and order ext. deft. Frank G. Beatty time to make any motion with respect to the amended complaint to 11-30-76--Stewart, J.	
Filed stip. and order ext. deft Wilbert J. Snipes time to answer or make any motion any motion with respect to the amended complaint to 11-30-76--Stewart, J.	
Filed transcript of record of proceedings, dated 10-22-76	
Filed deft. Vesco notice of appeal to the U.S.C.A. for the Second Circuit from opinion and order of 10-27-76. mailed notice to Shea, Gould, Climenko & Kramer.	
Filed stip. and order ext. deft. Marine Midland Bank time to answer to 12-24-76 --Stewart, J.	
Certified Copy of	

ns and Complaint
S IN A CIVIL ACTION

Formerly U.S. Form No. 45 Rev. (9-43)

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

TIONAL CONTROLS CORP.,

CIVIL ACTION FILE NO. 73 Civ 2518 (CES)

Plaintiff

v.

L. VESCO, HARRY L. SEARS, FRANK G. BEATTY, LeBLANC, STANLEY GRAZE, MILTON F. R, ULRICH J. STRICKLER, RICHARD E. CLAY, J. SNIPES, FREDERIC J. WEYMAR, GILBERT RAUB, C. HENRY BUHL, III, RALPH P. DODD, ISENHAUER, GEORGE PHILLIPE, JOEL GRADY, BAILEY, VESCO & CO., I.O.S. LTD., COMMONWEALTH BANK, INTERNATIONAL BAN- ILMOREY INVESTMENTS LTD., VALUE CAPITAL, LOBAL HOLDINGS LTD., GLOBAL FINANCIAL, UTLERS BANK LTD. (now known as WHO Hold- d.), ALLAN J. BUTLER, BANK CANTRADE LTD., LD AVIATION CORPORATION, FAIRFIELD GEN- RPORATION, SKYWAYS LEASING CORPORATION INE MIDLAND BANK Defendants

SUMMONS

above named Defendants :

u are hereby summoned and required to serve upon SHEA GOULD CLIMENKO & KRAMER

f's attorney , whose address is 330 Madison Avenue, New York, N. Y. 10017,

wer to the complaint which is herewith served upon you, within 20 days after service of this

ons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be

against you for the relief demanded in the complaint.

/s/ J. O. ADAMS
Clerk of Court.

/s/ B. EDWARDS
Deputy Clerk.

[Seal of Court]

New York, New York
June 7, 1973

—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

BEST COPY AVAILABLE

Summons and Complaint

UITED STATES DISTRICT COURT
OUTHERN DISTRICT OF NEW YORK

NTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

OBERT L. VESCO, HARRY L. SEARS, FRANK G. EATTY, NORMAN LeBLANC, STANLEY GRAZE, ILTON F. MEISSNER, ULRICH J. STRICKLER, ICHARD E. CLAY, WILBERT J. SNIPES, REDERICK J. WEYMAR, GILBERT R. J. STRAUB, . HENRY BUHL III, RALPH P. DODD, ALWYN ISENHAUER, GEORGE PHILLIPE, JOEL GRADY, HIRLEY BAILEY, VESCO & CO., IOS LTD., AHAMAS COMMONWEALTH BANK, INTERNATIONAL ANCORP, KILMOREY INVESTMENTS LTD., VALUE APITAL LTD., GLOBAL HOLDINGS LTD., GLOBAL INANCIAL LTD., BUTLERS BANK, LTD. (now nown as WHO HOLDINGS LTD.), ALLAN J. UTLER, BANK CANTRADE LTD., FAIRFIELD VIATION CORPORATION, FAIRFIELD GENERAL ORPORATION, SKYWAYS LEASING CORPORATION nd MARINE MIDLAND BANK,

Defendants.

73 Civ 2515

COMPLAINT

Plaintiff, by its attorneys David M. Butowsky and Shea Gould Climenko & Kramer, for its complaint herein, alleges upon information and belief:

APPLICABLE TO ALL COUNTS

1. Plaintiff brings this action to recover money damages and other relief by reason of defendants' violation of various provisions of the Securities Exchange Act of 1934 (15 U.S.C. §§78a et seq.) and the rules and regulations adopted and promulgated thereunder and by reason of defendants' breach of various state law and common law duties owed by defendants to plaintiff.

2. This Court has jurisdiction of this action by reason of §27 of the Securities Exchange Act of 1934 (15 U.S.C. §78aa) and the principles of pendent jurisdiction.

3. The acts and transactions complained of herein occurred, among other places, within the Southern District of New York.

4. Plaintiff, International Controls Corp. ("ICC") is a Florida corporation which has its principal place of business in Fairfield, New Jersey. It is engaged in various diversified business enterprises, and it has plants and offices throughout the United States. The common stock and warrants of ICC are listed on the American Stock Exchange.

5. (a) Defendant Robert L. Vesco ("Vesco") is a United States citizen who, at times relevant to this complaint, by reason of his ownership of more than 24% of ICC's outstanding stock, controlled and dominated ICC, and also, at various times, controlled and dominated defendants IOS, Ltd. and its subsidiaries, and Fairfield General Corporation and its subsidiaries. At times relevant to this complaint, Vesco has served as chairman of the board of directors, chief executive officer of and consultant to plaintiff ICC; chairman of the board of directors, chairman of the finance and member of the executive committees of defendant IOS; a director of defendant Bahamas Commonwealth Bank; director of defendant International Bancorp; director and president of defendant Value Capital; a director of defendant Fairfield General Corporation; president and a director of Fairfield Aviation Corporation; and vice president and a director of Skyways Leasing Corporation.

(b) Defendant Frank G. Beatty ("Beatty") is a United States citizen who, at times relevant to this complaint, has served as executive vice president--administration and finance, treasurer, acting chief executive officer and a director of plain-

tiff ICC; president, vice president, treasurer and director of defendant Fairfield General Corporation; vice president, treasurer and a director of Fairfield Aviation Corporation; vice president, treasurer and a director of defendant Skyways Leasing Corporation as well as vice president, treasurer and a director of defendant Value Capital Ltd.

(c) Defendant Harry L. Sears ("Sears") is a United States citizen who, at times relevant to this complaint, was an attorney representing defendant Vesco and a director of plaintiff ICC.

(d) Defendant Norman LeBlanc ("LeBlanc") is a Canadian citizen. At times relevant to this complaint, he has served as executive vice president, chief financial officer and director of defendant IOS, director of defendant International Bancorp, president and director of defendant Global Holdings, president and director of defendant Global Financial, and president, treasurer and purported shareholder of defendant Kilmorey Investments.

(e) Defendant Stanley Graze ("Graze") is a United States citizen who, at times relevant to this complaint, has served as portfolio manager for various mutual funds managed by defendant IOS, including Venture Fund (International) N. V. ("Venture Fund"), Fund of Funds Ltd. ("Fund of Funds"), IIT, an International Investment Trust ("IIT") and Transglobal Growth Fund, Ltd. ("Growth Fund"). He purportedly was a shareholder of defendant Kilmorey Investments.

(f) Defendant Milton F. Meissner ("Meissner"), among other things, is a United States citizen who, at times relevant to this complaint, has served as executive vice president,

president and director of defendant IOS, and was a purported shareholder of defendant Kilmorey Investments.

(g) Defendant Ulrich J. Strickler ("Strickler") is a Swiss citizen. At times relevant to this complaint, he has served as consultant to and director of defendant IOS, president and director of an ICC subsidiary, and director, officer and purported shareholder of Kilmorey Investments.

(h) Defendant Richard E. Clay ("Clay") is a United States citizen, who, at times relevant to this complaint, has served as vice president--office of the chairman of plaintiff ICC; vice president and a director of defendant International Bancorp; director of defendant Bahamas Commonwealth Bank; president and a director of defendant Value Capital; vice president, secretary and director of defendant Fairfield General Corporation; and vice president, secretary and a director of Skyways Leasing Corporation.

(i) Defendant Wilbert J. Snipes ("Snipes") is a United States citizen who, at times relevant to this complaint, has served as a director of plaintiff ICC, director of defendant Bahamas Commonwealth Bank, and senior vice president of American National Bank & Trust of New Jersey.

(j) Defendant Frederic J. Weymar ("Weymar") is a United States citizen who, at times relevant to this complaint, has served as managing director of defendant Butlers Bank, president and director of defendant International Bancorp, and a director of defendant Bahamas Commonwealth Bank.

(k) Defendant Gilbert R. J. Straub ("Straub") is a United States citizen who, at times relevant to this complaint has served as director of European Services for plaintiff ICC, a director and senior vice president of defendant Bahamas Commonwealth

Bank, and a director and senior vice president of defendant International Bancorp.

(l) Defendant C. Henry Buhl, III, ("Buhl") is a United States citizen who, at times relevant to this complaint, has served as director of defendant IOS, and director of Fund of Funds, Growth Fund, Venture Fund and their respective management companies.

(m) Defendant Ralph P. Dodd ("Dodd") is a United States citizen who, at times relevant to this complaint was president and a director of defendant Fairfield General Corporation and vice president and a director of ICC.

(n) Defendant Alwyn Eisenhauer ("Eisenhauer") is a United States citizen who, at times relevant to this complaint, was known as "director of Aviation" of plaintiff ICC but, in reality, he was defendant Vesco's personal pilot.

(o) Defendant George Phillipe ("Phillipe") is a Swiss citizen who, at relevant times, was an officer and director of defendant Bank Cantrade.

(p) Defendant Joel Grady ("Grady") is a United States citizen who, at times relevant to this complaint, was president and a director of Skyways Leasing Corporation, president and a director of Fairfield Aviation Corporation and vice president and a director of Fairfield General Corporation.

(q) Defendant IOS Ltd. ("IOS") is a nonresident Canadian corporation which is or was engaged in holding a complex of mutual fund management companies, companies engaged in managing real estate investment companies, insurance companies, and various banks. IOS, in December 1971, in exchange for securities of

defendant Value Capital, most of which were subsequently distributed to IOS shareholders, transferred to Value Capital certain insurance and real estate management companies and other assets of IOS. IOS, in October 1971, in exchange for certain securities of defendant International Bancorp, most of which were subsequently distributed to IOS shareholders, transferred to International Bancorp various of its banking assets including Orbis Bank GmbH, Overseas Development Bank Geneva, Overseas Development Bank Luxembourg, Overseas Development Bank Bahamas and Overseas Development Bank Curacao.

(r) Defendant Vesco & Co. ("Vesco & Co.") is a Delaware corporation, to which defendant Vesco and his children have transferred certain of their assets.

(s) Defendant Bahamas Commonwealth Bank Ltd. ("Bahamas Commonwealth Bank") is a Bahamian corporation whose principal executive offices are located in Nassau, Bahamas.

(t) Defendant International Bancorp Ltd. ("International Bancorp") is a Bahamian corporation with its principal executive offices in Nassau, Bahamas. It is a holding company for various banking assets spun-off by defendant IOS (as described in paragraph 5(q) above), and it also owns a majority of the outstanding common stock of the Bahamas Commonwealth Bank.

(u) Defendant Kilmorey Investments Ltd. ("Kilmorey Investments") is a Bahamian corporation which, on or about March 30, 1972, acquired from ICC certain former ICC subsidiaries which held certain shares of preferred and common stock of defendant IOS.

(v) Defendant Value Capital Ltd. ("Value Capital") is a Bahamian corporation which was formed in December 1971 and

became the receptacle of various insurance and real estate management companies and other assets of IOS (as described in paragraph 5(q) above).

(w) Defendant Global Holdings, Ltd. ("Global Holdings") is a Bahamian corporation which holds the outstanding stock of Global Financial Ltd.

(x) Defendant Global Financial Ltd. ("Global Financial") is a Bahamian corporation which holds certain securities of defendant Value Capital, defendant International Bancorp and defendant Kilmorey Investments, which were acquired from ICC in June 1972.

(y) Defendant Butlers Bank, Ltd ("Butlers Bank") is a bank formed under the laws of the Bahamas.

(z) Defendant Bank Cantrade Ltd. ("Bank Cantrade") is a bank formed under the laws of Switzerland.

(aa) Defendant Fairfield Aviation Corporation ("Fairfield Aviation") is a New Jersey corporation which was engaged in the general aviation business. On October 18, 1967, ICC acquired all of the issued and outstanding shares of Fairfield Aviation.

(bb) Defendant Fairfield General Corporation ("Fairfield General") is a New Jersey corporation organized on November 19, 1971, as a wholly-owned subsidiary of ICC which on December 9, 1971 acquired from ICC all of the outstanding stock of Fairfield Aviation. Pursuant to a registration statement filed on Form S-1 with the Securities and Exchange Commission on December 14, 1971, all of the stock of Fairfield General was distributed as a dividend in kind to the shareholders of ICC.

(cc) Defendant Skyways Leasing Corporation ("Skyways") was incorporated in New Jersey on December 23, 1970 and is a wholly-owned subsidiary of Fairfield Aviation. Its sole business is the ownership and operation of a Boeing 707 airplane.

(dd) Defendant Shirley Bailey ("Bailey") is a United States citizen who, at times relevant to this complaint, was secretary of ICC and Vesco's personal secretary.

(ee) Defendant Marine Midland Bank ("Marine Midland") is a banking corporation with offices in the Southern District of New York. Marine Midland was the transfer agent and paying agent for the dividend in kind described in paragraph 5(bb).

(ff) Defendant Allen J. Butler ("Butler") is a Bahamian citizen who, at times relevant to this complaint, was, among other things, president of defendant Butlers Bank.

FIRST COUNT

6. Beginning in or about 1970, defendant Vesco and the defendants named in the next paragraph embarked upon a scheme, as set forth hereinafter, by use of the United States mails, means or instrumentalities of interstate commerce and the facilities of national securities exchanges, to defraud plaintiff and its stockholders other than defendants ("its public stockholders"), engaged in acts, practices and courses of business to be described herein, which have operated as a fraud or deceit upon plaintiff and its public stockholders and have made untrue statements of material fact, or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading in connection with the purchase and sale of securities issued and/or owned by the following companies:

7. In engaging in the aforesaid scheme and fraudulent acts and practices, defendant Vesco has acted in concert with and has been aided and abetted by defendants LeBlanc, Meissner, Strickler, Graze, Beatty, Clay, Snipes, Weymar, Straub, Buhl, Dodd, Eisenhauer, Phillipe, Bailey, Grady, IOS, Bahamas Commonwealth Bank, International Bancorp, Value Capital, Kilmorey Investments, Butlers Bank, Bank Cantrade, Fairfield General, Fairfield Aviation and Skyways and by other persons and entities. The following participants in the aforesaid scheme, acts and practices will be referred to as "defendant Vesco and his group": defendants Vesco, LeBlanc, Meissner, Strickler, Graze, Beatty, Clay, Straub, Weymar, Snipes, Dodd, Grady and Bailey.

8. The aim and object of the aforesaid scheme was for defendant Vesco and his group, by using the assets of plaintiff ICC and its subsidiaries, to obtain and arrogate to themselves control of IOS and its assets and of other assets of ICC, outside of ICC and at ICC's expense. As part of and in connection with the scheme, Vesco and his group caused ICC and its subsidiaries to purchase IOS securities and properties and to sell the IOS securities and properties to entities controlled by defendant Vesco and his group.

9. In furtherance of the scheme, defendant Vesco and his group caused ICC and its subsidiaries to engage in a series of transactions by which Vesco and his group gained control of IOS.

On or about September 4, 1970, defendant Vesco and his group caused ICC Investments Ltd. ("IIL"), a subsidiary of ICC, to enter into a loan agreement with IOS pursuant to which IIL advanced $5,000,000 to IOS and received in exchange a note of IOS payable on May 24, 1971, together with warrants to purchase three million shares of IOS common stock. Thereafter, Vesco and his group caused the loan agreement to be amended, and thereafter caused the liability created by the agreement as amended to be settled by the payment to IIL of $5,500,000, the repurchase of the warrants of IOS for $350,000, and the delivery to IIL of 6,000,000 shares of IOS common stock.

10. In connection with the purchase by IIL of the IOS stock, defendant Vesco and his group failed to disclose to ICC, the other members of its board of directors and its public shareholders that the transactions were designed to enable defendant Vesco and his group to carry out their scheme to acquire the IOS stock and assets for themselves, and that defendant Vesco and his group intended to have IIL hold the stock at their disposal and for their benefit, until they could acquire it for themselves and intended to turn the IOS assets to their own private purposes to the loss and detriment of ICC and its public shareholders and of IOS and its affiliates and public shareholders.

11. In furtherance of the aforesaid scheme, and simultaneously with the transactions described in the preceding paragraph hereof, defendant Vesco and his group caused ICC, through its wholly-owned subsidiary American Interland Inc. to purchase, for a price which was $3,500,000 above the market price, a large block of IOS preferred stock.

12. In connection with the acquisition of the IOS preferred stock, defendants Vesco and his group failed to disclose

to ICC, the other members of its Board of Directors and its public shareholders that the purchase was designed to enable defendants to carry out their scheme to acquire the IOS stock and assets and the control thereof for themselves, and that defendant Vesco and his group intended to have American Interland, Inc. hold the stock at their disposal and for their private benefit until they could acquire it for themselves. In addition, defendant Vesco and his group failed to disclose that defendant Butlers Bank was aiding defendant Vesco in the scheme in return for various improper benefits which would be paid or given to defendant Butlers Bank and its managing director, defendant Weymar.

13. In furtherance of and as part of his scheme, Vesco and his group caused International Bancorp to sell to defendant Weymar 30% of its stock in exchange for all of the stock of Bahamas Commonwealth Bank and caused International Bancorp to distribute the remainder of its stock to IOS stockholders.

14. International Bancorp was a holding company which was a 70% subsidiary of IOS and which had a shareholders' equity in excess of $17,400,000.

15. In connection with the transactions by which defendant Weymar acquired 30% of the stock of International Bancorp, defendant Vesco and his group failed to disclose to ICC, the independent members of ICC's Board of Directors and the public stockholders of ICC that defendant Weymar was acting in concert with defendant Vesco and that the sale to defendant Weymar was part of the scheme by which defendant Vesco and his group intended to acquire IOS assets. In addition, in connection with the sale, defendant Vesco and his group failed to disclose that defendants Butlers Bank and Weymar were paid substantial premiums at the ex-

pense of IOS shareholders including ICC, and that the assets which Bahamas Commonwealth Bank owned when it was acquired by International Bancorp had been sold to it by Butlers Bank shortly before at grossly inflated prices far in excess of their actual value and at a profit to Butlers Bank.

16. As part of and as a further step in the scheme, in or about December 1971, defendant Vesco and his group caused IOS to transfer certain assets to Value Capital in exchange for shares of stock in Value Capital which were later distributed to IOS shareholders, including ICC.

17. As part of and as a further step in the scheme, defendant Vesco and his group caused ICC to transfer all of its interests in IOS and former IOS properties, including its stock in Value Capital, to newly formed companies purportedly unrelated to Vesco, but, in reality, under the control of defendant Vesco and his group. Viz:

(a) On or about March 30, 1972, Vesco and his group caused ICC to sell its subsidiaries which held IOS stock to Kilmorey Investments, a shell corporation, for a total consideration valued by defendant Vesco and his group at $2,240,000. Only $200,000 was paid in cash. A large part of the remaining consideration, valued at $1,740,000 was based upon a contingent obligation of the subsidiaries acquired by Kilmorey Investments from ICC to indemnify ICC against tax liabilities arising out of ICC's investments related to IOS. The consideration was illusory because such an obligation was likely never to arise and, in fact, never has.

(b) In connection with the sale of these ICC subsidiaries to Kilmorey, defendants failed to disclose to ICC and its public stockholders that the sale was part of and in further-

ance of defendant Vesco's scheme to obtain control of IOS, that Kilmorey, while purportedly owned by others, was, in reality, controlled and dominated by Vesco, that the consideration paid by Kilmorey was illusory and that IOS possessed substantial hidden assets, including the net asset value of shares in IOS funds which the purchasers would not or could not redeem and that Vesco and his group planned to loot IOS and its affiliates to the loss and detriment of ICC and its public shareholders and of IOS and its affiliates and public shareholders.

(c) On or about June 3, 1972, defendant Vesco caused ICC to divest itself of all of its stock in International Bancorp and Value Capital (which had been spun-off by IOS) by selling it, together with four notes in the approximate total amount of $1,872,505 to Global Financial for $7,350,000 in five-year notes which carried five percent interest, plus Global Financial's assumption of the contingent tax indemnification agreement referred to above in subparagraph (a) of this paragraph.

(d) In connection with the sale to Global Financial, defendants failed to disclose to ICC, the independent members of its Board of Directors and its public stockholders that the sale was part of and in furtherance of defendant Vesco's scheme to obtain control of IOS, that Global Financial had been purchased by Global Holdings, all of whose stock was, upon information and belief, owned by defendant LeBlanc, as a shell from International Bancorp, and that while Global Financial was purportedly owned by LeBlanc, it was, in reality, controlled and dominated by Vesco.

18. By reason of the foregoing, plaintiff has sustained damages in an amount ascertainable only by an accounting.

SECOND COUNT

19. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "17" inclusive hereof as though fully set forth herein.

20. In November 1970 ICC purported to declare a dividend in kind of all of the outstanding shares of Fairfield Aviation. Purportedly to provide a holding company structure for the resulting public company, ICC organized Fairfield General and on December 9, 1971, transferred all of the outstanding shares of Fairfield Aviation to Fairfield General, and thereupon purported to modify the dividend in kind to provide that it would consist of all of the outstanding shares of Fairfield General owned by ICC.

21. The purported dividend in kind was declared in furtherance of defendant Vesco's scheme to obtain control of IOS and its assets and of other assets of ICC, independent of ICC and at ICC's expense. In particular, defendant Vesco and his group agreed that they would increase the value of the companies to be spun off by the dividend in kind and thereby use the proposed dividend in kind as a vehicle by which Vesco and his group would acquire for their own personal use and for the use of IOS various assets of ICC, which would ultimately include a Boeing 707 airplane, to be lavishly renovated according to defendant Vesco's specifications, and to be paid for, operated and maintained at the expense of ICC and its public shareholders.

22. In furtherance of and as part of the aforesaid scheme, sometime after the formation of Skyways, which was incorporated on December 23, 1970, Vesco and his group caused ICC to contribute to Skyways "as of September 30, 1970" aircraft having an aggregate market value of $363,000 (before assumed debt of

approximately $183,000).

23. In furtherance of and as part of the aforesaid scheme, on June 15, 1971, defendant Vesco caused defendant Skyways to purchase a Boeing 707 airplane from Pan American Airways for $1,375,000, of which $343,750 was paid with funds contributed to Skyways by ICC. As security, Skyways granted to Pan American a first mortgage on the Boeing 707.

24. In furtherance of and as part of the aforesaid scheme, defendant Vesco caused ICC to lease the Boeing 707 from Skyways for the three months ended September 30, 1971 at a total cost to ICC of $439,000. In addition, defendant Vesco caused defendant Beatty to execute a lease with Skyways pursuant to which ICC purportedly leased the Boeing 707 for a period of five years at a monthly rental of $100,000 for each of the months of October, November and December 1971; $83,000 per month for each of the months January through December 1972; and $47,000 per month for each of the months January 1973 through September 1976 or for a total rental from July 1971 to September 1976 of more than $3,500,000.

25. In connection with the dividend in kind, Fairfield General filed a registration statement with the Securities and Exchange Commission on Form S-1 and distributed a prospectus to the stockholders of ICC which was materially false and misleading. The registration statement was signed by defendants Vesco, Dodd, Beatty and Clay.

26. In connection with the distribution of the dividend in kind, defendant Vesco and his group, and the registration statement and prospectus referred to in paragraph "25" above, failed to disclose to ICC, its Board of Directors and its stockholders:

(a) that the full terms of the lease had never been disclosed to the ICC Board of Directors;

(b) that the lease was inequitable and unfavorable to ICC, because, among other reasons, it provided for termination at Skyways' option, in the event of sale or transfer of ownership of the airplane, on five days' prior written notice to ICC;

(c) that the lease was inequitable and unfavorable to ICC because, among other reasons, it provided that any improvements made by ICC belonged to Skyways upon termination of the lease;

(d) that the payment schedule under the lease was designed and constructed by defendants Vesco and his group without relation to the actual value of the services to be provided to ICC under the lease but solely to enable Skyways to amortize, through payments by ICC, the cost to Skyways of the Boeing 707 plus a proposed $350,000 modification (which ultimately cost over $600,000) of the interior of the aircraft desired by Vesco. Thus, rental payments were extremely high during the first few months of the lease term and decreased to $47,000 per month starting in January 1972. The basic $47,000 per month payment had been computed in order to provide Skyways with the amount required for debt service, aircraft liability insurance and a ten-percent profit margin to Skyways.

(e) that a $200,000 note given to ICC by Skyways in return for advances made by ICC was subordinate to all other obligations of Skyways and that Skyways did not have sufficient income to enable it to pay the note when due;

(f) that the lease was merely a device by which Vesco would force ICC to pay for an airplane and its operation and maintenance for his personal use although the airplane was not necessary to ICC's or its subsidiaries', including Skyways', business and, indeed, was not intended to be used in such business;

(g) that the renovations which defendant Vesco and his group planned for the interior of the airplane included such features as a discotheque area with a wooden dance floor, a bar and "entertainment center" (including a stereo receiver, tape decks, rhythmic lighting, movie screen and projector and wine rack), a master bedroom, a guest bedroom and a sauna and soaking bath and shower facility.

(h) that the planned renovations would render the airplane commercially useless;

(i) that Fairfield General and its subsidiaries were not independently viable business entities, but were mere vehicles, whose principal business was to be the ownership and operation of the Boeing 707;

(j) that the dividend in kind was never properly and validly declared by ICC's Board of Directors;

(k) that the reason for the dividend was not, as claimed in the prospectus, the reorganization of ICC, but to enable Vesco and his group to exercise greater domination and control over Fairfield General and its subsidiaries than they were able to exercise through ICC;

(l) that the dividend would be of no substantial benefit to the public shareholders of ICC.

27. Defendant Vesco and his group deceived ICC, the independent members of its Board of Directors and its public stockholders into continuing its payments under the lease, and into giving up direct control over the leasing company by distributing the stock of Fairfield General (a) by falsely representing to ICC that the use of the Boeing 707 would not cost ICC any money since it was being used solely for defendant Vesco's activities on behalf of non-ICC entities and that ICC would be reimbursed by such entities for the use of the airplane, and (b) by falsely

representing, at the stockholders' meeting in July 1972, that ICC had not spent a single dollar in 1971 for the cost of the airplane that was not being reimbursed. By late 1972, while ICC expenses in connection with the aircraft amounted to more than $1,500,000, it had been reimbursed less than 25% of that amount. After complaints by ICC's directors with respect to the failure of ICC to obtain reimbursement for these expenses, defendant Vesco claimed that, contrary to earlier representations, a considerable number of his flights were in connection with ICC business and that ICC was not entitled to reimbursement for these, and defendant Vesco has repeatedly refused to obtain reimbursement from IOS and related entities for the use of the aircraft.

28. By reason of the foregoing, plaintiff has sustained damages in an amount ascertainable only by an accounting.

THIRD COUNT

29. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "21" and "23" through "27" inclusive above as though fully set forth herein.

30. By reason of the foregoing, defendant Vesco and his group engaged in self-dealing and has used the assets of ICC for their own personal aggrandizement and benefit contrary to and in breach of their fiduciary duties as directors and/or officers of ICC, and ICC has sustained damages in an amount which cannot precisely be ascertained except by an accounting, and is entitled to punitive and exemplary damages.

FOURTH COUNT

31. Plaintiff repeats and realleges each and every

allegation contained in paragraphs "1" through "21" and "23" through "27" above inclusive as though fully set forth herein.

32. The acquisition and sale of the stock and assets of IOS and the lease of the Boeing 707 aircraft and the contributions made to Skyways and Fairfield General by ICC were not necessary or proper to ICC's business and fulfilled no proper corporate purpose. The IOS transactions and the contributions to Fairfield General and Skyways and the lease of the aircraft and the payments made thereunder by ICC, at defendant Vesco's direction, constituted a waste and diversion of corporate assets.

33. By reason of the foregoing, ICC has sustained damages in an amount which cannot be aserttained except by an accounting.

FIFTH COUNT

34. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "5" and "23" through "27" above inclusive as though fully set forth herein.

35. In early January of 1973, ICC instructed defendant Eisenhauer to ground the Boeing 707 and not to incur any further expenses in connection with the aircraft unless in connection with activities specifically authorized in advance by ICC. ICC also instructed defendant Eisenhauer to reduce the size of his staff to the minimum number permitted by applicable regulations. Defendant Eisenhauer failed and refused to follow ICC's instructions.

36. In connection with negotiations between ICC, Fairfield and Skyways for consent to fly the Boeing 707 to Beirut for the purpose of demonstrating the 707 to a potential purchaser, ICC

entered into an agreement with defendant Eisenhauer pursuant to which Eisenhauer, in consideration for payment of $16,000 termination pay, agreed to fly the airplane in demonstration flights for purposes of sale. ICC instructed defendant Eisenhauer to fly the Boeing 707 from Texas to Newark, New Jersey.

37. In violation of his instructions, defendant Eisenhauer flew the Boeing 707 to Nassau, where he picked up defendants Vesco, Beatty and others and flew them to Beirut and back to Nassau where the Boeing 707 is being wrongfully held by defendants Skyways, Vesco and his group.

38. By reason of the foregoing, ICC is being deprived of the use of the Boeing 707 which it has leased from defendant Skyways, and the Boeing 707 is being and has been converted by defendants Vesco, Eisenhauer and Skyways to their own use.

SIXTH COUNT

39. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "5" and "23" through "27" above as though fully set forth herein.

40. The lease between ICC and defendant Skyways was unfair and harmful to plaintiff ICC, its approval by the ICC Board of Directors or by the ICC stockholders was fraudulently obtained, it was entered into solely at the direction of Vesco and his group and was maintained and continued upon the basis of misrepresentations to ICC made by defendant Vesco.

41. By reason of the foregoing, the lease between Skyways and ICC is null, void, and of no further effect, and ICC is entitled to recover from Skyways all payments heretofore made by ICC pursuant to the lease.

SEVENTH COUNT

42. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "5" and "21" through "23" above as though fully set forth herein.

43. In or about November, 1972, as a result of the wrongful actions of defendant Vesco and his group, the Securities and Exchange Commission commenced an action in this Court against ICC and some of the defendants in this action alleging numerous violations of the securities laws and seeking an accounting. In connection with that action an injunction was obtained prohibiting ICC from, among other things, making payments under the lease with defendant Skyways.

44. Defendant Skyways, at the direction of defendant Vesco and his group, nevertheless, and in order to perfect their scheme to obtain possession of the Boeing 707 purported to terminate the lease and instructed defendant Eisenhauer to fly the plane to Nassau, Bahamas, and Beirut, Lebanon. Defendant Eisenhauer, knowing that the plane was under lease to ICC, and having been instructed by ICC to fly the plane to Newark, New Jersey, nevertheless wrongfully flew the plane to Nassau and Beirut.

45. By reason of the foregoing, defendant Skyways has breached the lease and deprived plaintiff of the use of the Boeing 707.

EIGHTH COUNT

46. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "21" and "23" through "27" hereof as though fully set forth herein.

47. In connection with defendant Vesco and his group's wrongful scheme to convert the assets of ICC to his own use and benefit he incurred for and on behalf of ICC, and caused ICC to pay numerous legal fees which were in fact for defendant Vesco's own personal business; and to reimburse legal expenses that were not properly reimbursed.

48. In addition, defendant Vesco caused ICC to become a defendant in the action brought by the Securities and Exchange Commission, and in other legal actions resulting in waste of ICC's assets.

49. By reason of the foregoing, plaintiff has sustained damages in an amount ascertainable only by an accounting.

NINTH COUNT

50. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "21" and "23" through "27" hereof as though fully set forth herein.

51. In connection with the scheme described above, defendant Vesco and his group caused ICC to pay various improper fees, emoluments and other benefits to various defendants, including defendants, Sears, Buhl and Clay, and to other persons.

52. Such payments served no proper corporate purpose, were excessive in amount, and constituted corporate waste.

53. By reason of the foregoing, plaintiff has sustained damages in an amount ascertainable only by an accounting.

TENTH COUNT

54. Plaintiff repeats and realleges each and every

allegation contained in paragraphs "1" through "5" above as though fully set forth herein.

55. Defendant Vesco caused ICC Investments Limited ("IIL"), a subsidiary of ICC, to enter into an agreement with defendant IOS dated January 25, 1971 entitled "Second Amendment to Purchase Agreement" pursuant to which, inter alia, IOS agreed to reimburse IIL, ICC, or their respective employees for all travel expenses and other out-of-pocket expenses incurred in connection with matters pertaining to the business of defendant IOS and its subsidiaries.

56. Defendant Vesco caused ICC to enter into an agreement dated April 1, 1972 with defendant IOS, pursuant to which ICC agreed to make defendant Vesco available to defendant IOS as a consultant. Such agreement requires defendant IOS (i) to reimburse ICC for travel expenses incurred by ICC or defendant Vesco in the performance of consulting services to defendant IOS, including expenses for transportation by private aircraft, office facilities, entertainment and lodging, and (ii) to indemnify defendant Vesco, ICC and each of ICC's directors, officers, employees and agents against any losses, claims, damages, fines, expenses or liabilities arising out of or based upon any act or failure to act by the indemnified party directly or indirectly involving or relating to the services of defendant Vesco as a consultant to defendant IOS.

57. Defendant Vesco caused ICC to enter into an agreement dated April 1, 1972 with defendant Kilmorey Investments, pursuant to which ICC agreed to make defendant Vesco available to defendant Kilmorey Investments as a consultant. Such agreement requires defendant Kilmorey Investments (i) to reimburse ICC for travel expenses incurred by ICC or defendant Vesco in the perform-

ance of consulting services to defendant Kilmorey Investments, including expenses for transportation by private aircraft, office facilities, entertainment and lodging, and (ii) to indemnify defendant Vesco, ICC and each of ICC's directors, officers, employees and agents against any losses, claims, damages, fines, expenses or liabilities arising out of or based upon any act or failure to act by the indemnified party directly or indirectly involving or relating to the services of defendant Vesco as a consultant to defendant Kilmorey Investments.

58. Defendant Vesco caused ICC to enter into an agreement with defendants Global Financial and Global Holdings dated June 3, 1972, pursuant to which ICC sold to defendant Global Financial, among other things, shares owned by ICC in defendants International Bancorp and Value Capital and agreed to make available to International Bancorp and Value Capital personnel of ICC. Such agreement requires defendants Global Holdings and Global Financial (i) to reimburse ICC for expenses incurred by ICC personnel in the performance of consulting services to defendants International Bancorp and Value Capital, including expenses for transportation by private aircraft, office facilities, entertainment and lodging, and (ii) to indemnify and hold harmless ICC and ICC's personnel against any losses, claims, damages, fines, expenses or liabilities arising out of or based upon any act or failure to act by the indemnified party directly or indirectly involving or relating to the services of ICC personnel as consultants to defendants International Bancorp and Value Capital or their subsidiaries.

59. ICC has incurred reimbursable expenses for the year 1972 in connection with the agreements referred to in paragraphs "55" through "58" above in the aggregate amount of $3,109,341.

Of such amount, an aggregate of $1,252,484 was paid to ICC either by or for the account of defendants IOS, Kilmorey Investments, Global Holdings and Global Financial; and $500,000 was, according to an advice of credit from the defendant Bahamas Commonwealth Bank, deposited to the account of ICC, but was blocked for reasons unknown. Accordingly, there remains a balance of $500,000 being wrongfully withheld from ICC and $1,856,857 (including said $500,000) due and owing to ICC.

60. Defendant Bahamas Commonwealth Bank has failed and refused to pay the amount wrongfully withheld and defendants IOS, Kilmorey Investments, Global Holdings and Global Financial have failed and refused to pay the balance due and owing to ICC although payment has been duly demanded.

61. By reason of the foregoing, plaintiff has sustained damages in the amount of $1,856,857,plus interest.

ELEVENTH COUNT

62. Plaintiff repeats and realleges each and every allegation made in paragraphs "1" through "21" and "23" through "27" hereof as though fully set forth herein.

63. In selecting defendant Marine Midland as the transfer and paying agent for the dividend in kind described in paragraphs "5(bb)" and "20" hereof, plaintiff relied on Marine Midland's reputation and ability to fultill the duties of transfer and paying agent with the care and skill appropriate to that office.

64. In paying the dividend in kind, Marine Midland failed to act with the customary care and skill appropriate to a

transfer and paying agent and, indeed, was grossly negligent in that Marine Midland failed to obtain proper corporate authorization from ICC to pay such dividend, and paid such dividend even though it knew or should have known that the purported dividend had never been validly authorized and could not properly be paid.

65. By reason of the foregoing, plaintiff has sustained damages in an amount ascertainable only by an accounting.

WHEREFORE, plaintiff demands judgment as follows:

(a) on the first, second, third, fourth, sixth, eighth, ninth and eleventh counts, directing that the defendants account to plaintiff for all damages sustained by virtue of the acts of defendants as set forth therein;

(b) on the fifth and seventh counts, judgment declaring that:

(1) the lease between ICC and Skyways entered into on or about June 15, 1971 be declared void;

(2) that the dividend consisting of shares of Fairfield General Corporation distributed to the shareholders of ICC be declared null and void;

(3) that the Boeing 707 aircraft belongs to ICC, subject to any outstanding indebtedness to Pan American Airways Inc.; and

(4) directing that defendants forthwith deliver the Boeing 707 to plaintiff;

(c) on the tenth count, damages in the amount of $1,856,857, together with interest thereon; and

(d) enjoining defendants, pendente lite, and permanently, from using the assets of plaintiff ICC or its subsidiaries for their own purposes to the loss and detriment of ICC and its shareholders;

together with such other and further relief as to this Court shall seem just and proper, together with interest and the costs and disbursements of this action.

DAVID M. BUTOWSKY, ESQ.
230 Park Avenue
New York, New York
725-5360

SHEA GOULD CLIMENKO & KRAMER
330 Madison Avenue
New York, New York
661-3200

Attorneys for plaintiff

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, ET AL.

Defendants.

COMPLAINT

SHEA GOULD CLIMENKO & KRAMER

330 MADISON AVENUE

NEW YORK, N. Y. 10017

MO 1-3200

AND

ATTORNEYS FOR
DAVID H. BODNESKY
230 Park Avenue
New York 10017

Summons and Complaint 51a

Summons and Complaint 51a

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORPORATION,

Plaintiff

against

ROBERT L. VESCO, et al.,

Defendants

SUMMONS & COMPLAINT

SHEA GOULD CLIMENKO & KRAMER

330 MADISON AVENUE

NEW YORK, N. Y. 10017

MO 1-3200

ATTORNEYS FOR Plaintiff

Order

U.S. DISTRICT COURT
FILED
JUL 31 1973
S. D. OF N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al.,

Defendants.

Civ. Action No.

73 Civ. 2518-CES

ORDER APPOINTING PERSON TO SERVE PROCESS

FILED
AUG 1 1973

Upon the annexed affidavit of C. Leonard Gordon sworn to on July 27, 1973, and it appearing that Lois S. Yohonn is a qualified person over twenty-one years of age and is not a party to this action, and that speed is essential in the servi of the summons and complaint and that there will therefore be a saving in fees if service is made by said person, it is hereby

ORDERED, that Lois S. Yohonn be and she hereby is authorized to effect service of process in the within action on defendant Robert L. Vesco.

Dated: New York, New York
July 27, 1973

Charles E. Stewart
U.S.D.J.

Order]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al.,

Defendants.

JUL 31 1973
U. S. D. C. OF N. Y.

Civ Action No.

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Upon the affidavit of C. Leonard Gordon sworn to on July 27, 1973, and it appearing that Lois S. Yohonn is a qualified person over twenty-one years of age and is not a party to this action, and that speed is essential in the service of the summons and complaint and that there will therefore be a saving of fees if service is made by said person, it is hereby

ORDERED, that Lois S. Yohonn be and she hereby is authorized to effect service of process in the within action on defendant Robert L. Vesco, and it is further

ORDERED that, service of process upon said defendant Robert L. Vesco may be effected by depositing a copy of the summons and complaint herein upon the premises of the last known residence of said defendant located in Nassau, Bahamas, and mailing a copy of the summons and complaint herein to said defendant at the address of such last known residence in Nassau, Bahamas.

Dated: New York, New York
July 27, 1973.

MICROFILM
AUG 1 1973

U.S.D.J.

davit
STATES DISTRICT COURT
N DISTRICT OF NEW YORK

TIONAL CONTROLS CORP.,

Plaintiff,

-against-

L. VESCO, et al.,

Defendants.

Civ. Action No.
73 Civ. 2518-CES

AFFIDAVIT

FILED
AUG 6 11 05 AM '73
U.S.D.C. N.Y.

LOIS SYLOR YOHONN, being duly sworn, deposes and says:

1. I am an attorney associated with the firm of Shea Climenko & Kramer, 330 Madison Avenue, New York, New York , General Counsel for International Controls Corp., plain- herein.

2. By Order dated July 27, 1973, I was authorized to the Summons and Complaint herein upon the defendant Robert sco ("Vesco").

3. On Saturday, July 28, 1973 I proceeded to Nassau, Bahamas. Having been informed that there were guards station- t the residence of defendant Vesco, I determined to first mpt to serve him personally other than at his house. There- , after making numerous inquiries as to the possible where- its of defendant Vesco, I spent the afternoon and evening of lay, July 29, and most of the day on Monday, July 30 searching the said defendant in various places located in Nassau and adise Island, the Bahamas, which places I had been informed

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Affidavit

defendant Vesco frequented. These places included several restaurants, hotels, other places of entertainment, and yacht marinas.

4. Late in the afternoon on July 30, 1973, having been unsuccessful in locating the defendant Vesco up to that time, I proceeded to his residence on Brace Ridge Road, Nassau, the Bahamas.

5. Upon arriving at the defendant's residence, I proceeded to the gate of the grounds, which was locked and secured by three bolts. Two men who appeared to be guards were standing in the driveway near the gate. They approached and asked what I wanted. I inquired whether this was Mr. Vesco's house. After some evasion, one of the guards said that it was, and asked what I wanted.

6. I told him that a friend of Mr. Vesco in New York had suggested I stop by while I was in Nassau, and asked if I could speak to Mr. Vesco. The guard asked my name and I told him that I was Miss Yohonn.

7. One of the guards said that he would have to check and went inside the house. The other guard remained in the driveway. While the first guard was in the house, a car drove up containing several persons, including a woman whom I believe to be Mrs. Vesco, and two children. The remaining guard opened the gate for the car to enter; I remained standing outside the gate. After the people had gotten out of the car and entered the house, a boy of about 16 or 17 years old came out of the door, came up to me at the gate, and said, "My father said to ask you what you want."

I replied, "I want to serve him with a summons and complaint in an action entitled ICC v. Vesco." The boy jumped back and I threw the complaint at him. He caught it and threw it back at me, and ran back into the house. I then picked up the papers a handed them to one of the guards saying, "I am serving you with the summons and complaint in ICC v. Vesco." The guards then be came belligerent, threw the papers at me and said repeatedly, "You get out of here. We don't want no papers on this property Don't you put anything on this property." They then threw the complaint out in the road.

8. At this point, being somewhat afraid of the guar I ran back to my car, which was parked several yards down the road, and drove back to the Paradise Island Hotel.

9. I returned to my room and telephoned the Chamber of Charles E. Stewart, District Judge, to inform him of what had happened and to request that he authorize me to use the ancillary order which had been previously prepared and signed c July 29, 1973, which Order permitted me to effect good service upon defendant Vesco by depositing a copy of the summons and co plaint upon the premises of defendant Vesco's residence on Broc Ridge Road. Judge Stewart authorized me to effect service as provided in this second Order.

10. Anticipating possible problems upon my return to defendant Vesco's residence, I rolled up the said summons and complaint and tied it with a blue ribbon in order to facilitate throwing it over the wall onto the property.

Affidavit

11. I then hired a taxi and instructed the driver to drive along the coast road, which he did. I then told him to turn on to Brace Ridge Road, drive to the end, and come back. Whe we came even with the beginning of Mr. Vesco's property, which was located several yards from the gate at which the guards were standing, I told him to stop. I got out of the car, threw the summons and complaint onto the lawn a few feet from the front door of the house, and took a photograph of the premises with the summons and complaint lying on the lawn. I then got quickly back into the taxi. At this point, the two guards came running out of the gate, one of them bearing a piece of pipe and the other carrying a stick. One of them pulled open the door of the taxi and ordered me to get out. I answered, "No." He held the door open and kept saying, "You get out of that car, you take those papers." I again refused. At this point, the taxi driver said to the guard, "This lady hired me. You can't do anything her while she is in my taxi." I then said to the guard, "Close that door immediately. You have no right to touch this car." guard replied, "You have no right to put anything on this prop One guard then said to the other, "Go call the C.I.D.". (The C. is the Bahamian Secret Police). There then ensued a period of or two minutes during which the guard continued to demand that get out of the taxi; the taxi driver insisted that I had hired and that the guards had no right to touch the car; and during which I repeatedly requested the taxi driver to drive on. Fi the taxi driver put the car into gear and started to drive al down the road. At this point, I noticed that Vesco's son, wh

~~Affidavit~~

had spoken with earlier, was standing in the middle of the roa watching the altercation. The taxi driver drove slowly to the end of the road and proceeded onto the coast road. A short wa down the road, he said to me, "Ma'am, those men are following They are in the car behind the car in back of us." At this p becoming seriously concerned for my safety, I instructed the driver to proceed to the Britannia Beach Hotel, which is a h some distance from the Paradise Island Hotel, but connected to by various corridors and the like.

12. I got the name and taxi number of the driver, requested that he be good enough not to inform anyone of my whereabouts in the event the people in the car which had fo us approached him and asked any questions. I then proceed a circuitous route back to the Paradise Island Hotel, plac film in my camera in a safe-deposit box and proceeded to m I remained in my room for perhaps one hour, during which c couple of occasions the telephone rang. Each time I pick up there was no one on the line.

13. I do not know whether or not the last-ment event is of any significance, but I was and continued to cerned for my personal safety from that point until I le Bahamas, which was the following day, July 31, there bei further flights available on July 30 after my return to at approximately 7:00 p.m.

Exhibit A | Exhibit B

14. On August 1, after my return to New York, I mailed
ffidavit
dditional copy of the summons and complaint herein to defen-
Robert L. Vesco, addressed to him at his last known resi-
e in Nassau, the Bahamas at Brace Ridge Road, by depositing
and correct copies of the same, properly enclosed in a first
s post paid wrapper, in the official depository maintained
exclusively controlled by the United States Government at
Madison Avenue, New York, New York 10017.

Lois Sylor Yohonn

rn to before me this
day of August, 1973.

Alice Manos

ALICE MANOS
Notary Public, State of New York
No. 24-7702840
Qualified In Kings County
Certificate filed in New York County
Commission Expires March 30, 19 7 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., Plaintiff, -against- ROBERT L. VESCO, HARRY L. SEARS, FRANK G. BEATTY, NORMAN LeBLANC, STANLEY GRAZE, MILTON F. MEISSNER, ULRICH J. STRICKLER, RICHARD E. CLAY, WILBERT J. SNIPES, FREDERIC J. WEYMAR, GILBERT R.J. STRAUB, C. HENRY BUHL III, RALPH P. DODD, ALWYN EISENHAUER, GEORGE PHILLIPE, JOEL GRADY, SHIRLEY BAILEY, VESCO & CO., INC., IOS LTD., COLUMBUS TRUST COMPANY, LIMITED, BAHAMAS COMMONWEALTH BANK, INTERNATIONAL BANCORP, KILMOREY INVESTMENTS LTD., VALUE CAPITAL LTD., GLOBAL HOLDINGS LTD., GLOBAL FINANCIAL LTD., BUTLERS BANK, LTD. (now known as WHO HOLDINGS LTD.), ALLAN J. BUTLER, BANK CANTRADE LTD., FAIRFIELD AVIATION CORPORATION, FAIRFIELD GENERAL CORPORATION, SKYWAYS LEASING CORPORATION and MARINE MIDLAND BANK-NEW YORK, Defendants.	:	73 Civ. 2518 (CES) AMENDED COMPLAINT

Plaintiff, by its attorneys David M. Butowsky and Shea Gould Climenko & Kramer, for its complaint herein, alleges upon information and belief:

APPLICABLE TO ALL COUNTS

1. Plaintiff brings this action to recover money damages and other relief by reason of defendants' violation of various provisions of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78a et seq.) and the rules and regulations adopted and promulgated thereunder and by reason of defendants' breach of various state law and common law duties owed by defendants to plaintiff.

2. This Court has jurisdiction of this action by reason of § 27 of the Securities Exchange Act of 1934 (15 U.S.C. § 78aa) and the principles of pendent jurisdiction.

3. The acts and transactions complained of herein occurred

among other places, within the Southern District of New York.

4. Plaintiff International Controls Corp. ("ICC") is a Florida corporation which has its principal place of business in Thomaston, Connecticut. It is engaged in various diversified business enterprises, and it has plants and offices throughout the United States. The common stock and warrants of ICC are listed on the American Stock Exchange.

5. (a) Defendant Robert L. Vesco ("Vesco") is a United States citizen who, at times relevant to this complaint, by reason of his ownership of more than 24% of ICC's outstanding stock, controlled and dominated ICC and its subsidiaries, and also at various times, controlled and dominated defendants IOS Ltd. and its subsidiaries, defendants Columbus Trust Company, Limited, Bahamas Commonwealth Bank, International Bancorp, Kilmorey Investments, Ltd., Value Capital Ltd., Global Financial Ltd. and Butlers Bank, Ltd., defendant Fairfield General Corporation and its subsidiaries, and defendant Vesco & Co., Inc. At times relevant to this complaint, Vesco has served as chairman of the board of directors, chief executive officer of and consultant to plaintiff ICC' chairman of the board of directors, chairman of the finance and member of the executive committees of defendant IOS Ltd.; a director of defendant Bahamas Commonwealth Bank; director of defendant International Bancorp; director and president of defendant Value Capital Ltd.; a director of defendant Fairfield General Corporation; president and a director of Fairfield Aviation Corporation; and vice president and a director of Skyways Leasing Corporation.

(b) Defendant Frank G. Beatty ("Beatty") is a United States citizen who, at times relevant to this complaint, has served as executive vice president-administration and finance, treasurer, acting chief executive officer and a director of plaintiff ICC; president, vice president, treasurer and direc-

tor of defendant Fairfield General Corporation; vice president, treasurer and a director of Fairfield Aviation Corporation; vice president, treasurer and a director of defendant Skyways Leasing Corporation, as well as vice president, treasurer and a director of defendant Value Capital Ltd.

(c) Defendant Harry L. Sears ("Sears") is a United States citizen who, at times relevant to this complaint, was an attorney representing defendant Vesco and a director of plaintiff ICC.

(d) Defendant Norman LeBlanc ("LeBlanc") is a Canadian citizen. At times relevant to this complaint, he has served as executive vice president, chief financial officer and director of defendant IOS Ltd.; director of defendant International Bancorp; director of defendant Global Holdings Ltd.; president and director of defendant Global Financial Ltd., and president, treasurer and purported shareholder of defendant Kilmorey Investments Ltd.

(e) Defendant Stanley Graze ("Graze") is a United States citizen who, at times relevant to this complaint, has served as portfolio manager for various mutual funds managed by defendant IOS Ltd., including Venture Fund (International) N.V. ("Venture Fund"), Fund of Funds, Ltd. ("Fund of Funds"), IIT, an International Investment Trust ("IIT") and Transglobal Growth Fund, Ltd. ("Growth Fund"). He purportedly was a shareholder of defendant Kilmorey Investments Ltd.

(f) Defendant Milton F. Meissner ("Meissner"), among other things, is a United States citizen who, at times relevant to this complaint, has served as executive vice president, president and director of defendant IOS Ltd., and was a purported shareholder of defendant Kilmore Investments Ltd.

(g) Defendant Ulrich J. Strickler ("Strickler") is a Swiss citizen. At times relevant to this complaint, he has served as consultant to and director of defendant IOS Ltd., president and director of an ICC subsidiary, and director, officer and purported shareholder of Kilmorey Investments Ltd.

(h) Defendant Richard E. Clay ("Clay") is a United States citizen, who, at times relevant to this complaint, has served as vice president-office of the chairman of plaintiff ICC; vice president and a director of defendant International Bancorp; director of defendant Bahamas Commonwealth Bank; president and a director of defendant Value Capital Ltd.; vice president, secretary and director of defendant Fairfield General Corporation; and vice president, secretary and a director of Skyways Leasing Corporation.

(i) Defendant Wilbert J. Snipes ("Snipes") is a United States citizen who, at times relevant to this complaint, has served as a director of plaintiff ICC, director of defendant Bahamas Commonwealth Bank, and senior vice president of American National Bank & Trust of New Jersey.

(j) Defendant Frederic J. Weymar ("Weymar") is a United States citizen who, at times relevant to this complaint, has served as managing director of defendant Butlers Bank, Ltd., president and director of defendant International Bancorp, and a director of defendant Bahamas Commonwealth Bank.

(k) Defendant Gilbert R.J. Straub ("Straub") is a United States citizen who, at times relevant to this complaint has served as director of European Services for plaintiff ICC, a director and senior vice president of defendant Bahamas Commonwealth Bank, and a director and senior vice president of defendant International Bancorp.

(l) Defendant C. Henry Buhl, III ("Buhl") is a United States citizen who, at times relevant to this complaint, has served as director of defendant IOS Ltd. and director of Fund of Funds, Growth Fund, Venture Fund and their respective management companies.

(m) Defendant Ralph P. Dodd ("Dodd") is a United States citizen who, at times relevant to this complaint, was president and a director of defendant Fairfield General Corporation and vice president and a director of ICC.

(n) Defendant George Phillipe ("Phillipe") is a Swiss citizen who, at relevant times, was an officer and director of defendant Bank Cantrade Ltd.

(o) Defendant Joel Grady ("Grady") is a United States citizen who, at times relevant to this complaint, was president and a director of Skyways Leasing Corporation, president and a director of Fairfield Aviation Corporation and vice president and a director of Fairfield General Corporation.

(p) Defendant IOS Ltd. ("IOS") is a nonresident Canadian corporation which is or was engaged in holding a complex of mutual fund management companies, companies engaged in managing real estate investment companies, insurance companies, and various banks. IOS, in December 1971, in exchange for securities of defendant Value Capital Ltd., most of which were subsequently distributed to IOS shareholders, transferred to Value Capital Ltd. certain insurance and real estate management companies and other assets of IOS. IOS, in October 1971, in exchange for certain securities of defendant International Bancorp, most of which were subsequently distributed to IOS shareholders, transferred to International Bancorp various of its banking assets including Orbis Bank GmbH, Overseas Development Bank Geneva, Overseas De-

velopment Bank Luxembourg, Overseas Development Bank Bahamas and Overseas Development Bank Curacao.

(q) Defendant Vesco & Co., Inc. ("Vesco & Co.") is a Delaware corporation dominated and controlled by Vesco. Vesco and his children have transferred to Vesco & Co. certain of their assets including, but not limited to, 846,380 shares of ICC common stock. By reason of his domination and control of Vesco & Co., Vesco & Co. is the alter ego of Vesco. By reason of Vesco's transfer of certain assets, some or all of which may represent fruits of the fraud and wrongdoing alleged herein. to Vesco & Co., Vesco & Co.'s presence in this action is necessary in order to afford plaintiff complete relief and to insure against future violations of the federal securities laws.

(r) Defendant Bahamas Commonwealth Bank Ltd. ("Bahamas Commonwealth Bank") is a Bahamian corporation whose principal executive offices are located in Nassau, Bahamas.

(s) Defendant International Bancorp Ltd. ("International Bancorp") is a Bahamian corporation with its principal executive offices in Nassau, Bahamas. It is a holding company for various banking assets spun-off by defendant IOS (as described in paragraph 5(p) above), and it also owns a majority of the outstanding common stock of the Bahamas Commonwealth Bank.

(t) Defendant Kilmorey Investments Ltd. ("Kilmorey Investments") is a Bahamian corporation which, on or about March 30, 1972, acquired from ICC certain former ICC subsidiaries which held certain shares of preferred and common stock of defendant IOS.

(u) Defendant Value Capital Ltd. ("Value Capital") is a Bahamian corporation which was formed in December 1971,

and became the receptacle of various insurance and real estate management companies and other assets of IOS (as described in paragraph 5(p) above).

(v) Defendant Columbus Trust Company, Limited ("Columbus Trust") is a Bahamian corporation. Until March of 1973, defendant LeBlanc, through subsidiaries of Butlers Bank, Ltd., owned approximately 60% of the outstanding shares of Columbus Trust.

(w) Defendant Global Holdings, Ltd. ("Global Holdings") is a Bahamian corporation which holds the outstanding stock of Global Financial Ltd.

(x) Defendant Global Financial Ltd. ("Global Financial") is a Bahamian corporation which holds certain securities of defendant Value Capital, defendant International Bancorp and defendant Kilmorey Investments, which were acquired from ICC in June 1972.

(y) Defendant Butlers Bank, Ltd. ("Butlers Bank") is a bank formed under the laws of the Bahamas.

(z) Defendant Bank Cantrade Ltd. ("Bank Cantrade") is a bank formed under the laws of Switzerland.

(aa) Defendant Fairfield Aviation Corporation ("Fairfield Aviation") is a New Jersey corporation which was engaged in the general aviation business. On October 18, 1967, ICC acquired all of the issued and outstanding shares of Fairfield Aviation.

(bb) Defendant Fairfield General Corporation ("Fairfield General") is a New Jersey corporation organized on November 19, 1971 as a wholly-owned subsidiary of ICC which on December 9, 1971 acquired from ICC all of the outstanding stock

of Fairfield Aviation. Pursuant to a registration statement filed on Form S-1 with the Securities and Exchange Commission on December 14, 1971, all of the stock of Fairfield General was distributed as a dividend in kind to the shareholders of ICC.

(cc) Defendant Skyways Leasing Corporation ("Skyways") was incorporated in New Jersey on December 23, 1970 and is a wholly-owned subsidiary of Fairfield Aviation. Its sole business is the ownership and operation of a Boeing 707 airplane.

(dd) Defendant Shirley Bailey ("Bailey") is a United States citizen who, at times relevant to this complaint, was secretary of ICC and Vesco's personal secretary.

(ee) Defendant Marine Midland Bank-New York ("Marine Midland") is a banking corporation with offices in the Southern District of New York. Marine Midland was the transfer agent and paying agent for the dividend in kind described in paragraph 5(bb).

(ff) Defendant Allan J. Butler ("Butler") is a Bahamian citizen who, at times relevant to this complaint, was, among other things, president of defendant Butlers Bank.

(gg) Defendant Alwyn Eisenhauer ("Eisenhauer") is a United States citizen who, at times relevant to this complaint, was known as "director of aviation" of plaintiff ICC but, in reality, he was defendant Vesco's personal pilot.

FIRST COUNT

6. Beginning in or about 1970, defendant Vesco and the defendants named in the next paragraph embarked upon a scheme, as set forth hereinafter, by use of the United States mails, means or instrumentalities of interstate commerce and the facilities of national securities exchanges, to defraud plaintiff and its stockholders other than defendants ("its public stockholders"), engaged in acts, practices and courses of business

to be described herein, which have operated as a fraud or deceit upon plaintiff and its public stockholders and have made untrue statements of material fact, or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading in connection with the purchase and sale of securities issued and/or owned by the following companies:

ICC
IOS Ltd.
Linkink Progressive Corporation, S.A. ("Linkink")
American Interland, Inc.
International Bancorp Ltd.
Value Capital Ltd.
Kilmorey Investments, Ltd.
Fairfield General Corporation
Fairfield Aviation Corporation

7. In engaging in the aforesaid scheme and fraudulent acts and practices, defendant Vesco has acted in concert with and has been aided and abetted by defendants LeBlanc, Meissner, Strickler, Graze, Beatty, Clay, Snipes, Weymar, Straub, Buhl, Dodd, Phillipe, Bailey, Grady, IOS, Vesco & Co., Bahamas Commonwealth Bank, International Bancorp, Value Capital, Kilmorey Investments, Butlers Bank, Bank Cantrade, Fairfield General, Fairfield Aviation and Skyways and by other persons and entities. The following participants in the aforesaid scheme, acts and practices will be referred to as "defendant Vesco and his group": Defendants Vesco, LeBlanc, Meissner, Strickler, Graze, Beatty, Clay, Straub, Weymar, Snipes, Dodd, Grady and Bailey.

8. The aim and object of the aforesaid scheme was for defendant Vesco and his group, by using the assets of plaintiff ICC and its subsidiaries, to obtain and arrogate to themselves control of IOS and its assets and of other assets of ICC, outside of ICC and at ICC's expense. As part of and in connection with the scheme, Vesco and his group caused ICC and its sub-

sidiaries to purchase IOS securities and properties and to sell the IOS securities and properties to entities controlled by defendant Vesco and his group.

9. In furtherance of the scheme, defendant Vesco and his group caused ICC and its subsidiaries to engage in a series of transactions by which Vesco and his group gained control of IOS. On or about September 4, 1970, defendant Vesco and his group caused ICC Investments Ltd. ("IIL"), a subsidiary of ICC, to enter into a loan agreement with IOS pursuant to which IIL advanced $5,000,000 to IOS and received in exchange a note of IOS payable on May 24, 1971, together with warrants to purchase three million shares of IOS common stock. Thereafter, Vesco and his group caused the loan agreement to be amended, and thereafter caused the liability created by the agreement as amended to be settled by the payment to IIL of $5,500,000, the repurchase of the warrants of IOS for $350,000, and the delivery to IIL of 6,000,000 shares of IOS common stock.

10. In connection with the purchase by IIL of the IOS stock, defendant Vesco and his group failed to disclose to ICC, the other members of its board of directors and its public shareholders that the transactions were designed to enable defendant Vesco and his group to carry out their scheme to acquire the IOS stock and assets for themselves, and that defendant Vesco and his group intended to have IIL hold the stock at their disposal and for their benefit, until they could acquire it for themselves and intended to turn the IOS assets to their own private purposes to the loss and detriment of ICC and its public shareholders and of IOS and its affiliates and public shareholders.

11. In furtherance of the aforesaid scheme, and simul-

taneously with the transactions described in the preceding paragraph hereof, defendant Vesco and his group caused ICC, through its wholly-owned subsidiary American Interland Inc., to purchase, for a price which was $3,500,000 above the market price, a large block of IOS preferred stock.

12. In connection with the acquisition of the IOS preferred stock, defendants Vesco and his group failed to disclose to ICC, the other members of its Board of Directors and its public shareholders that the purchase was designed to enable defendants to carry out their scheme to acquire the IOS stock and assets and the control thereof for themselves, and that defendant Vesco and his group intended to have American Interland Inc. hold the stock at their disposal and for their private benefit until they could acquire it for themselves. In addition, defendant Vesco and his group failed to disclose that defendant Butlers Bank was aiding defendant Vesco in the scheme in return for various improper benefits which would be paid or given to defendant Butlers Bank and its managing director, defendant Weymar.

13. In furtherance of and as part of his scheme, Vesco and his group caused International Bancorp to sell to defendant Weymar 30% of its stock in exchange for all of the stock of Bahamas Commonwealth Bank and caused International Bancorp to distribute the remainder of its stock to IOS stockholders.

14. International Bancorp was a holding company which was a 70% subsidiary of IOS and which had a shareholders' equity in excess of $17,400,000.

15. In connection with the transactions by which defendant Weymar acquired 30% of the stock of International Bancorp, defendant Vesco and his group failed to disclose to ICC, the

independent members of ICC's Board of Directors and the public stockholders of ICC that defendant Weymar was acting in concert with defendant Vesco and that the sale to defendant Weymar was part of the scheme by which defendant Vesco and his group intended to acquire IOS assets. In addition, in connection with the sale, defendant Vesco and his group failed to disclose that defendants Butlers Bank and Weymar were paid substantial premiums at the expense of IOS shareholders including ICC, and that the assets which Bahamas Commonwealth Bank owned when it was acquired by International Bancorp had been sold to it by Butlers Bank shortly before at grossly inflated prices far in excess of their actual value and at a profit to Butlers Bank.

16. As part of and as a further step in the scheme, in or about December 1971, defendant Vesco and his group caused IOS to transfer certain assets to Value Capital in exchange for shares of stock in Value Capital which were later distributed to IOS shareholders, including ICC.

17. As part of and as a further step in the scheme, defendant Vesco and his group caused ICC to transfer all of its interests in IOS and former IOS properties, including its stock in International Bancorp and Value Capital, to newly formed companies purportedly unrelated to Vesco, but, in reality, under the control of defendant Vesco and his group. Viz:

(a) On or about March 30, 1972, Vesco and his group caused ICC to sell its subsidiaries which held IOS stock to Kilmorey Investments, a shell corporation, for a total consideration valued by defendant Vesco and his group at $2,240,000. Only $200,000 was paid in cash. A large part of the remaining consideration, valued at $1,740,000, was based upon a contingent obligation of the subsidiaries acquired by Kilmorey Investments from ICC to indemnify ICC against tax liabilities arising out of

ICC's investments related to IOS. The consideration was illusory because such an obligation was likely never to arise and, in fact, never has.

(b) In connection with the sale of these ICC subsidiaries to Kilmorey Investments, defendants failed to disclose to ICC and its public stockholders that the sale was part of and in furtherance of defendant Vesco's scheme to obtain control of IOS, that Kilmorey Investments, while purportedly owned by others, was, in reality, controlled and dominated by Vesco, that the consideration paid by Kilmorey Investments was illusory and that IOS possessed substantial hidden assets, including the net asset value of shares in IOS funds which the purchasers would not or could not redeem and that Vesco and his group planned to loot IOS and its affiliates to the loss and detriment of ICC and its public shareholders and of IOS and its affiliates and public shareholders.

(c) On or about June 3, 1972, defendant Vesco caused ICC to divest itself of all of its stock in International Bancorp and Value Capital (which had been spun-off by IOS) by selling it, together with four notes in the approximate total amount of $1,872,505, to Global Financial for $7,350,000 in five-year notes which carried five percent interest, plus Global Financial's assumption of the contingent tax indemnification agreement referred to above in subparagraph (a) of this paragraph.

(d) In connection with the sale to Global Financial, defendants failed to disclose to ICC, the independent members of its Board of Directors and its public stockholders that the sale was part of and in furtherance of defendant Vesco's scheme to obtain control of IOS for the purpose of looting IOS and its affiliates, that Global Financial had been purchased by Global Holdings, all of whose stock was, upon information

and belief, owned by defendant LeBlanc, as a shell from International Bancorp, and that while Global Financial was purportedly owned by LeBlanc, it was, in reality, controlled and dominated by Vesco.

18. Subsequent to the consummation of the transaction referred to in paragraph "17(a)" and "17(c)" above, defendant Vesco and his group and others proceed to and did loot IOS and its affiliates by misappropriating assets (including securities issued by United States companies) of certain funds known as the "Dollar Funds" (Venture Fund (International) N.V.; Fund of Funds Ltd.; IIT, an International Investment Trust; and Transglobal Growth Fund, Ltd.), which were managed by IOS subsidiaries, and the assets of two closed-end real estate funds (Investment Properties International Limited and Global Natural Resources Properties Limited) managed by subsidiaries of Value Capital. Defendant Columbus Trust participated in the misappropriation of the assets as described above.

19. Various lawsuits have been commenced or threatened against plaintiff seeking to hold plaintiff liable for damages suffered by the shareholders of IOS and its affiliates, the shareholders and unit holder of the Dollar Funds and the closed-end real estate funds referred to in paragraph "18" and others, as a result of the various wrongful acts of defendant Vesco and his group and others described hereinabove including, but not limited to, the looting of IOS and its affiliates as described in more detail in paragraph "18" hereof.

20. As a result of the foregoing, plaintiff may be held liable to the shareholders of IOS and its affiliates, the shareholders and unit holder of the Dollar Funds and the closed-end real estate funds referred to in paragraph "18" and others, in which event plaintiff is entitled to indemnification from defen-

dant Vesco, Columbus Trust and all other defendants who are alleged to have participated in the wrongdoing described herein for the full amount of any such liability plus the cost of defending such lawsuits, including attorneys' fees.

21. By reason of the foregoing, plaintiff has sustained damages in an amount ascertainable only by an accounting.

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SECOND COUNT

22. Plaintiff repeats and realleges each and every allegation contained in paragraph "1" through "17", inclusive, hereof as though fully set forth herein.

23. In November 1970, ICC purported to declare a dividend in kind of all of the outstanding shares of Fairfield Aviation. Purportedly to provide a holding company structure for the resulting public company, defendant Vesco caused ICC to organize Fairfield General and, on December 9, 1971, to transfer all of the outstanding shares of Fairfield Aviation to Fairfield General in exchange for all of the outstanding shares of Fairfield General, and thereupon to purport to modify the dividend in kind to provide that it would consist of all of the outstanding shares of Fairfield General owned by ICC.

24. The exchange by ICC of all of the outstanding shares of Fairfield Aviation for all of the outstanding shares of Fairfield General was effected and the purported dividend in kind of the Fairfield General shares was declared in furtherance of and as an integral part of defendant Vesco's scheme to obtain control of IOS and its assets and of other assets of ICC, independent of ICC and at ICC's expense. In particular, defendant Vesco and his group agreed that they would increase the value

of the companies to be spun off by the dividend in kind and thereby use the proposed dividend in kind as a vehicle by which Vesco and his group would acquire for their own personal use and for the use of IOS various assets of ICC, which would ultimately include a Boeing 707 airplane, to be lavishly renovated according to defendant Vesco's specifications, and to be paid for, operated and maintained at the expense of ICC and its public shareholders.

25. In furtherance of and as part of the aforesaid scheme, sometime after the formation of Skyways, which was incorporated on December 23, 1970, Vesco and his group caused ICC to contribute to Skyways "as of September 30, 1970" aircraft having an aggregate market value of $363,000 (before assumed debt of approximately $183,000).

26. In furtherance of and as part of the aforesaid scheme, on June 15, 1971, defendant Vesco caused defendant Skyways to purchase a Boeing 707 airplane from Pan American Airways for $1,375,000, of which $343,750 was paid with funds contributed to Skyways by ICC. As security, Skyways granted to Pan American Airways a first mortgage on the Boeing 707.

27. In furtherance of and as part of the aforesaid scheme, defendant Vesco caused ICC to lease the Boeing 707 from Skyways for the three months ended September 30, 1971 at a total cost to ICC of $439,000. In addition, defendant Vesco caused defendant Beatty to execute a lease with Skyways pursuant to which ICC purportedly leased the Boeing 707 for a period of five years at a monthly rental of $100,000 for each of the months of October, November and December 1971; $83,000 per month for each of the months January through December 1972; and $47,000 per month for each of the months January 1973 through September 1976 or

for a total rental from January 1971 to September 1976 of more than $3,500,000.

28. In connection with the dividend in kind, Fairfield General filed a registration statement with the Securities and Exchange Commission on Form S-1 and distributed a prospectus to the stockholders of ICC which was materially false and misleading. The registration statement was signed by defendants Vesco, Dodd, Beatty and Clay.

29. In connection with the distribution of the dividend in kind, defendant Vesco and his group, and the registration statement and prospectus referred to in paragraph "28" above, failed to disclose to ICC, its Board of Directors and its stockholders:

(a) that the full terms of the lease had never been disclosed to the ICC Board of Directors;

(b) that the lease was inequitable and unfavorable to ICC, because, among other reasons, it provided for termination at Skyways' option, in the event of sale or transfer of ownership of the airplane, on five days' prior written notice to ICC;

(c) that the lease was inequitable and unfavorable to ICC because, among other reasons, it provided that any improvements made by ICC belonged to Skyways upon termination of the lease;

(d) that the payment schedule under the lease was designed and constructed by defendants Vesco and his group without relation to the actual value of the services to be provided to ICC under the lease but solely to enable Skyways to amortize, through payments by ICC, the cost to Skyways of the Boeing 707 plus a proposed $350,000 modification (which ultimately cost over

$600,000) of the interior of the aircraft desired by Vesco. Thus, rental payments were extremely high during the first few months of the lease term and decreased to $47,000 per month starting in January 1972. The basic $47,000 per month payment had been computed in order to provide Skyways with the amount required for debt service, aircraft liability insurance and a ten-percent profit margin to Skyways;

(e) that a $200,000 note given to ICC by Skyways in return for advances made by ICC was subordinate to all other obligations of Skyways and that Skyways did not have sufficient income to enable it to pay the note when due;

(f) that the lease was merely a device by which Vesco would force ICC to pay for an airplane and its operation and maintenance for his personal use although the airplane was not necessary to ICC's or its subsidiaries', including Skyways', business and, indeed, was not intended to be used in such business;

(g) that the renovations which defendant Vesco and his group planned for the interior of the airplane included such features as a discotheque area witha wooden dance floor, a bar and "entertainment center" (including a stereo receiver, tape decks, rhythmic lighting, movie screen and projector and wine rack), a master bedroom, a guest bedroom and a sauna and soaking bath and shower facility;

(h) that the planned renovations would render the airplane commercially useless;

(i) that Fairfield General and its subsidiaries were not independently viable business entities, but were mere vehicles, whose principal business was to be the ownership and operation of the Boeing 707;

(j) that the dividend in kind was never properly and validly declared by ICC's Board of Directors;

(k) that the reason for the dividend was not, as claimed in the prospectus, the reorganization of ICC, but to enable Vesco and his group to exercise greater domination and control over Fairfield General and its subsidiaries than they were able to exercise through ICC;

(l) that the dividend would be of no substantial benefit to the public shareholders of ICC.

30. Defendant Vesco and his group deceived ICC, the independent members of its Board of Directors and its public stockholders into continuing its payments under the lease, and into giving up direct control over the leasing company by distributing the stock of Fairfield General (a) by falsely representing to ICC that the use of the Boeing 707 would not cost ICC any money since it was being used solely for defendant Vesco's activities on behalf of non-ICC entities and that ICC would be reimbursed by such entities for the use of the airplane, and (b) by falsely representing, at the stockholders' meeting in July 1972, that ICC had not spent a single dollar in 1971 for the cost of the airplane that was not being reimbursed. By late 1972, while ICC expenses in connection with the aircraft amounted to more than $1,500,000, it had been reimbursed less than 25% of that amount. After complaints by ICC's directors with respect to the failure of ICC to obtain reimbursement for these expenses, defendant Vesco claimed that, contrary to earlier representations, a considerable number of his flights were in connection with ICC business and that ICC was not entitled to reimbursement for these, and defendant Vesco has repeatedly refused to obtain reimbursement from IOS and related entities for the use of the aircraft.

31. By reason of the foregoing, plaintiff has sustained damages in an amount ascertainable only by an accounting.

THIRD COUNT

32. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "17" and "23" through "30", inclusive, above as though fully set forth herein.

33. By reason of the foregoing, defendant Vesco and his group engaged in self-dealing and have used the assets of ICC for their own personal aggrandizement and benefit contrary to and in breach of their fiduciary duties as directors and/or officers of ICC, and ICC has sustained damages in an amount which cannot precisely be ascertained except by an accounting, and is entitled to punitive and exemplary damages.

FOURTH COUNT

34. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "17" and "23" through "30" above, inclusive, as though fully set forth herein.

35. The acquisition and sale of the stock and assets of IOS and the lease of the Boeing 707 aircraft and the contributions made to Skyways and Fairfield General by ICC were not necessary or proper to ICC's business and fulfilled no proper corporate purpose. The IOS transactions and the contributions to Fairfield General and Skyways and the lease of the aircraft and the payments made thereunder by ICC, at defendant Vesco's direction, constituted a waste and diversion of corporate assets.

36. By reason of the foregoing, ICC has sustained damages in an amount which cannot be ascertained except by an accounting.

FIFTH COUNT

37. Plaintiff repeats and realleges each and ever

Amended Complaint

THIRD COUNT

32. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "17" and "23" through "30", inclusive, above as though fully set forth herein.

33. By reason of the foregoing, defendant Vesco and his group engaged in self-dealing and have used the assets of ICC for their own personal aggrandizement and benefit contrary to and in breach of their fiduciary duties as directors and/or officers of ICC, and ICC has sustained damages in an amount which cannot precisely be ascertained except by an accounting, and is entitled to punitive and exemplary damages.

FOURTH COUNT

34. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "17" and "23" through "30" above, inclusive, as though fully set forth herein.

35. The acquisition and sale of the stock and assets of IOS and the lease of the Boeing 707 aircraft and the contributions made to Skyways and Fairfield General by ICC were not necessary or proper to ICC's business and fulfilled no proper corporate purpose. The IOS transactions and the contributions to Fairfield General and Skyways and the lease of the aircraft and the payments made thereunder by ICC, at defendant Vesco's direction, constituted a waste and diversion of corporate assets.

36. By reason of the foregoing, ICC has sustained damages in an amount which cannot be ascertained except by an accounting.

FIFTH COUNT

37. Plaintiff repeats and realleges each and every alle-

gation contained in paragraphs "1" through "5" and "26" through "30" above, inclusive, as though fully set forth herein.

38. In early January of 1973, ICC instructed defendant Eisenhauer to ground the Boeing 707 and not to incur any further expenses in connection with the aircraft unless in connection with activities specifically authorized in advance by ICC. ICC also instructed Eisenhauer to reduce the size of his staff to the minimum number permitted by applicable regulations. Eisenhauer failed and refused to follow ICC's instruction.

39. In connection with negotiations between ICC, Fairfield and Skyways for consent to fly the Boeing 707 to Beirut for the purpose of demonstrating the 707 to a potential purchaser, ICC entered into an agreement with Eisenhauer pursuant to which Eisenhauer, in consideration for payment of $16,000 termination pay, agreed to fly the airplane in demonstration flights for purposes of sale. ICC instructed Eisenhauer to fly the Boeing 707 from Texas to Newark, New Jersey.

40. In violation of his instructions, defendant Eisenhauer flew the Boeing 707 to Nassau, where he picked up defendants Vesco, Beatty and others and flew them to Beirut and back to Nassau, where the Boeing 707 is being wrongfully held by defendants Skyways, Vesco and his group.

41. By reason of the foregoing, ICC is being deprived of the use of the Boeing 707 which it has leased from defendant Skyways, and the Boeing 707 is being and has been converted by defendants Vesco, Eisenhauer and Skyways to their own use.

SIXTH COUNT

42. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "5", "26" through "30", and "38" through "40", as though fully set forth herein.

43. By reason of the foregoing, defendant Eisenhauer has breached the agreement referred to in paragraph "39" hereof, has been unjustly enriched in an amount of $16,000, and ICC has sustained damages in the amount of $16,000.

Amended Complaint

SEVENTH COUNT

44. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "5" and "26" through "30" above as though fully set forth herein.

45. The lease between ICC and defendant Skyways was unfair and harmful to plaintiff ICC, its approval by the ICC Board of Directors or by the ICC stockholders was fraudulently obtained, it was entered into solely at the direction of Vesco and his group and was maintained and continued upon the basis of misrepresentations to ICC made by defendant Vesco.

46. By reason of the foregoing, the lease between Skyways and ICC is null, void, and of no further effect, and ICC is entitled to an accounting to recover from Skyways all payments heretofore made by ICC pursuant to the lease.

EIGHTH COUNT

47. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "5" and "26" through "30" above as though fully set forth herein.

48. In or about November 1972, as a result of the wrongful actions of defendant Vesco and his group, the Securities and Exchange Commission commenced an action in this Court against ICC and some of the defendants in this action alleging numerous violations of the securities laws and seeking an accounting. In connection with that action, an injunction was obtained prohibiting ICC from, among other things, making payments under the lease with defendant Skyways.

49. Defendant Skyways, at the direction of defendant Vesco and his group, nevertheless and in order to perfect their scheme to obtain possession of the Boeing 707, purported to terminate the lease and instructed Eisenhauer to fly the plane to Nassau, Ba-

hamas and Beirut, Lebanon. Eisenhauer, knowing that the plane was under lease to ICC, and having been instructed by ICC to fly the plane to Newark, New Jersey, nevertheless wrongfully flew the plane to Nassau and Beirut.

50. By reason of the foregoing, defendant Skyways has breached the lease and deprived plaintiff of the use of the Boeing 707.

NINTH COUNT

51. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "17" and "26" through "30" hereof as though fully set forth herein.

52. In connection with defendant Vesco and his group's wrongful scheme to convert the assets of ICC to his own use and benefit, he incurred for and on behalf of ICC, and caused ICC to pay, numerous legal fees which were in fact for defendant Vesco's own personal business; and to reimburse legal expenses that were not properly reimbursed.

53. In addition, defendant Vesco caused ICC to become a defendant in the action brought by the Securities and Exchange Commission, and in other legal actions resulting in waste of ICC's assets.

54. By reason of the foregoing, plaintiff has sustained damages in an amount ascertainable only by an accounting.

TENTH COUNT

55. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "21" and "26" through "30" hereof as though fully set forth herein.

56. In connection with the scheme described above, defendant Vesco and his group caused ICC to pay various improper fees, emoluments and other benefits to various defendants, including defendants Sears, Buhl and Clay, and to other persons.

57. Such payments served no proper corporate purpose, were excessive in amount, and constituted corporate waste.

58. By reason of the foregoing, plaintiff has sustained damages in an amount ascertainable only by an accounting.

ELEVENTH COUNT

59. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "5" above as though fully set forth herein.

60. Defendant Vesco caused ICC Investments Limited ("IIL"), a subsidiary of ICC, to enter into an agreement with defendant IOS, dated January 25, 1971, entitled "Second Amendment to Purchase Agreement", pursuant to which, inter alia, IOS agreed to reimburse IIL, ICC, or their respective employees, for all travel expenses and other out-of-pocket expenses incurred in connection with matters pertaining to the business of defendant IOS and its subsidiaries.

61. Defendant Vesco caused ICC to enter into an agreement dated April 1, 1972 with defendant IOS, pursuant to which ICC agreed to make defendant Vesco available to defendant IOS as a consultant. Such agreement requires defendant IOS (i) to reimburse ICC for travel expenses incurred by ICC or defendant Vesco in the performance of consulting services to defendant IOS, including expenses for transportation by private aircraft, office facilities, entertainment and lodging, and (ii) to in-

demnify defendant Vesco, ICC and each of ICC's directors, officers, employees and agents against any losses, claims, damages, fines, expenses or liabilities arising out of or based upon any act or failure to act by the indemnified party directly or indirectly involving or relating to the services of defendant Vesco as a consultant to defendant IOS.

62. Defendant Vesco caused ICC to enter into an agreement dated April 1, 1972 with defendant Kilmorey Investments, pursuant to which ICC agreed to make defendant Vesco available to defendant Kilmorey Investments as a consultant. Such agreement requires defendant Kilmorey Investments (i) to reimburse ICC for travel expenses incurred by ICC or defendant Vesco in the performance of consulting services to defendant Kilmorey Investments, including expenses for transportation by private aircraft, office facilities, entertainment and lodging, and (ii) to indemnify defendant Vesco, ICC and each of ICC's directors, officers, employees and agents against any losses, claims, damages, fines, expenses or liabilities arising out of or based upon any act or failure to act by the indemnified party directly or indirectly involving or relating to the services of defendant Vesco as a consultant to defendant Kilmorey Investments.

63. Defendant Vesco caused ICC to enter into an agreement with defendants Global Financial and Global Holdings dated June 3, 1972, pursuant to which ICC sold to defendant Global Financial, among other things, shares owned by ICC in defendants International Bancorp and Value Capital and agreed to make available to International Bankcorp and Value Capital personnel of ICC. Such agreement requires defendants Global Holdings and Global Financial (i) to reimburse ICC for expenses incurred by ICC personnel in the performance of consulting services to de-

fendants International Bancorp and Value Capital, including expenses for transportation by private aircraft, office facilities, entertainment and lodging, and (ii) to indemnify and hold harmless ICC and ICC's personnel against any losses, claims, damages, fines, expenses or liabilities arising out of or based upon any act or failure to act by the indemnified party directly or indirectly involving or relating to the services of ICC personnel as consultants to defendants International Bancorp and Value Capital or their subsidiaries.

64. ICC has incurred reimbursable expenses for the year 1972 in connection with the agreements referred to in paragraphs "60" through "63" above in the aggregate amount of $3,109,341. Of such amount, an aggregate of $1,252,484 was paid to ICC either by or for the account of defendants IOS, Kilmorey Investments, Global Holdings and Global Financial; and $500,000 was, according to an advice of credit from the defendant Bahamas Commonwealth Bank, deposited to the account of ICC, but was blocked for reasons unknown. Accordingly, there remains a balance of $500,000 being wrongfully withheld from ICC and $1,856,857 (including said $500,000) due and owing to ICC.

65. Defendant Bahamas Commonwealth Bank has failed and refused to pay the amount wrongfully withheld and defendants IOS, Kilmorey Investments, Global Holdings and Global Financial have failed and refused to pay the balance due and owing to ICC although payment has been duly demanded.

66. By reason of the foregoing, plaintiff has sustained damages in the amount of $1,856,857, plus interest.

TWELFTH COUNT

67. Plaintiff repeats and realleges each and every alle-

gation made in paragraphs "1" through "17" and "23" through "30" hereof as though fully set forth herein.

68. In selecting defendant Marine Midland as the transfer and paying agent for the dividend in kind described in paragraphs "5(bb)" and "23" hereof, plaintiff relied on Marine Midland's reputation and ability to fulfill the duties of transfer and paying agent with the care and skill appropriate to that office.

69. In paying the dividend in kind, Marine Midland failed to act with the customary care and skill appropriate to a transfer and paying agent and, indeed, was grossly negligent in that Marine Midland failed to obtain proper corporate authorization from ICC to pay such dividend, and paid such dividend even though it knew or should have known that the purported dividend had never been validly authorized and could not properly be paid.

70. By reason of the foregoing, plaintiff has sustained damages in an amount ascertainable only by an accounting.

THIRTEENTH COUNT

71. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "17" and "23" through "30" above as though fully set forth herein.

72. In furtherance of and as part of the aforesaid scheme, and in order to attempt to insulate himself from liability in connection with said scheme, defendant Vesco on or about September 25, 1972 caused ICC to enter into a consulting agreement (the "Consulting Agreement") with him which provided, inter alia, that ICC would indemnify and hold him harmless for any losses, claims, damages, fines, expenses or liabilities arose out of or were based upon any act or failure to act by him in his capacity

of a director, officer, employee, agent or consultant of ICC or any other corporation or entity which as the representative of ICC he served as such at the request of ICC.

73. In obtaining approval of the Consulting Agreement by the Board of Directors of ICC, defendant Vesco made misrepresentations of material facts and failed to disclose certain material facts to ICC, the independent members of ICC's Board of Directors and the public stockholders of ICC including, inter alia:

(a) that the true purpose of the Consulting Agreement was to attempt to insulate defendant Vesco from liability in connection with the aforesaid scheme and to attempt to impair ICC's right to recover from defendant Vesco any damages it sustained by reason of said scheme;

(b) that the Consulting Agreement was inequitable and unfair to ICC in that, among other things, it purported to deprive ICC of the right to recover from Vesco any damages it sustained by reason of said scheme;

(c) that the compensation of $120,000 provided for in the Consulting Agreement had no relation to the actual value of the services Vesco was to perform for ICC during the term of the agreement and, in fact, that Vesco had no intention of performing any service which would be beneficial to ICC;

(d) that the true purpose of the Consulting Agreement was to retain for Vesco control of ICC and its Board of Directors while making it appear that he had relinquished his control of ICC and its Board of Directors.

74. Had defendant Vesco not made the misrepresentations and had he disclosed the material facts he failed to disclose, as described in paragraph "73" above, the Board of Directors of

ICC would not have approved the Consulting Agreement.

75. Plaintiff has no adequate remedy at law.

FOURTEENTH COUNT

76. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "17", "23" through "30" and "72" through "74" as though fully set forth herein.

77. Between September 25, 1972 and the present, ICC has paid defendant Vesco various amounts pursuant to the Consulting Agreement for which defendant Vesco performed no services for ICC. In addition, ICC has, pursuant to the Consulting Agreement, reimbursed defendant Vesco for expenses which were not properly chargeable to ICC but rather were incurred by Vesco in connection with his own personal affairs.

78. By reason of the foregoing, plaintiff has sustained damages in an amount ascertainable only by an accounting.

WHEREFORE, plaintiff demands judgment as follows:

(a) On the First Count:

(1) directing that the defendants who participated in the wrongdoings alleged therein account to plaintiff for damages sustained by virtue of the acts of defendants as set forth therein; and

(2) against the defendants who participated in the wrongdoings alleged therein in an amount equal to any amount plaintiff is required to pay to others by reason of such wrongdoings plus the costs, including attorneys' fees, incurred by plaintiff in defending any actions brought against it by reason of such wrongdoings;

Amended Complaint

(b) On the Second Count:

(1) directing that the defendants account to plaintiff for all damages sustained by virtue of the acts of defendants set forth therein; and

(2) declaring that the transaction in which ICC transferred all of the outstanding shares of Fairfield Aviation to Fairfield General in exchange for all of the outstanding shares of Fairfield General is null and void; and

(3) declaring that the dividend in kind, distributed by ICC consisting of shares of Fairfield General distributed to the shareholders of ICC, is null and void; and

(4) declaring that the transactions in which ICC made contributions of assets to Fairfield Aviation and Skyways are null and void; and

(5) declaring that the lease between ICC and Skyways entered into on or about June 15, 1971 is null and void; and

(6) declaring that the Boeing 707 aircraft belongs to ICC subject to any outstanding indebtedness to Pan American Airways, Inc.;

(c) On the Third, Fourth, Eighth, Ninth, Tenth, and Twelfth Counts, directing that the defendants who participated in the wrongdoings alleged therein account to plaintiff for all damages sustained by virtue of the acts of defendants as set forth therein;

(d) On the Fifth Count, judgment declaring that:

(1) the Boeing 707 aircraft belongs to ICC, subject to any outstanding indebtedness to Pan American Airways, Inc.; and

(2) directing that defendants forthwith deliver the Boeing 707 to plaintiff;

(e) On the Sixth Count, against defendant Eisenhauer in the amount of $16,000, together with interest thereon;

(f) On the Seventh Count:

(1) directing that the defendants account to plaintiff for all damages sustained by virtue of the acts of defendants set forth therein;

(2) declaring that the lease between ICC and Skyways entered into on or about June 15, 1971 is null and void;

(g) On the Eleventh Count, damages in the amount of $1,856,857, together with interest thereon;

(h) On the Thirteenth Count, declaring that the Consulting Agreement is null and void;

(i) On the Fourteenth Count, directing that defendant Vesco account to plaintiff for all damages sustained by virtue of the acts of defendants as set forth therein;

(j) Enjoining Vesco & Co., pendente lite and permanently, from transferring, voting or otherwise exercising any rights with respect to the shares of ICC held by it as transferee of said shares from defendant Vesco or members of his family; and

ended Complaint

(k) Enjoining defendants, pendente lite and permanently, using the assets of plaintiff ICC or its subsidiaries or o & Co. for their own purposes to the loss and detriment of and its shareholders,

ether with such other and further relief as to this Court ll seem just and proper, together with interest and the costs disbursements of this action.

DAVID M. BUTOWSKY, ESQ.
230 Park Avenue
New York, New York
(212) 725-5360

SHEA GOULD CLIMENKO & KRAMER

By _____
A Member of the Firm
330 Madison Avenue
New York, New York 10017
(212) 661-3200

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

~~SOUTHERN~~ DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

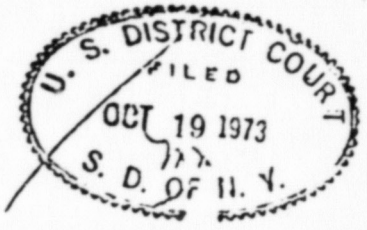
ROBERT L. VESCO, et al.,

Defendants.

AMENDED COMPLAINT

SHEA GOULD CLIMENKO & KRAMER
330 MADISON AVENUE
NEW YORK, N. Y. 10017
MO 1-3200

ATTORNEYS FOR Plaintiff



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, ET AL.,

Defendants.

Civ. Action No.

73 Civ. 2518 (CES)

ORDER APPOINTING PERSON TO SERVE PROCESS

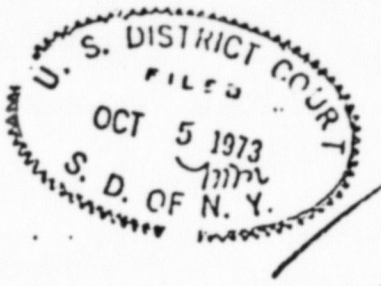
Upon the affidavit of C. Leonard Gordon sworn to on October 18, 1973, and it appearing that Joseph A. Bondi, David M. Butowsky and Daniel L. Carroll are qualified persons over twenty-one years of age and are not parties to this action, and that there are difficulties entailed in the service of the summons and complaint and that it is expedient that service be made by any of said persons, it is hereby

ORDERED, that Joseph A. Bondi, David M. Butowsky, and Daniel L. Carroll be and each hereby is authorized to effect service of process in the within action on defendants Robert L. Vesco, Norman LeBlanc, Stanley Graze, Richard E. Clay, Wilbert J. Snipes, Frederic J. Weymar, Gilbert R. J. Straub, C. Henry Buhl, III, Ralph P. Dodd, Shirley Bailey, IOS, Ltd., Columbus Trust Company, Limited, Bahamas Commonwealth Bank, International Bancorp, Kilmorey Investments, Ltd., Value Capital, Ltd., Global Holdings Ltd., Global Financial, Ltd., Butlers Bank, Ltd. (now known as Who Holdings, Ltd.), and Allan J. Butler, and it is further

ORDERED, that service of process upon any of said defendants may be (i) by any method of service of process authorized by Rule 4 of the Federal Rules of Civil Procedure; or (ii) as to individual defendants, by leaving a copy of the summons and amended complaint herein upon the premises of such defendant's last known residence located in Nassau, Bahamas and mailing a copy thereof to such defendant at either the Post Office Box of such defendant or to the address of such last known residence of such defendant in Nassau, Bahamas; or (iii) as to corporate defendants, by depositing a copy of the summons and amended complaint herein upon the premises of the last know place of business of such defendant located in Nassau, Bahamas and mailing a copy thereof to such defendant at the Post Office Box of such defendant or to the street address of the last know business premises of such defendant in Nassau, Bahamas.

Dated: New York, New York
October 17, 1973.

Charles E. Stewart, Jr.
U.S.D.J.



ITED STATES DISTRICT COURT
UTHERN DISTRICT OF NEW YORK

TERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ERT L. VESCO, et. al.,

Defendants.

Civ. Action No.
73 Civ. 2518 (CES)

JUDGMENT

This action having been commenced by the filing of a plaint and the issuance of a summons on the 7th day of June, 3, and this court by order dated July 27, 1973, having horized Lois Sylor Yohonn to effect service of process herein defendant Robert L. Vesco, and a copy of the said summons complaint having been duly served on defendant Robert L. co by Lois Sylor Yohonn on the 30th day of July, 1973, and of of such service having been filed in the office of the rk of this Court on the 6th day of August, 1973; and

Defendant, ROBERT L. VESCO, having failed to plead, ear, move or otherwise defend with respect to the complaint ein, and the time for said defendant to appear, answer or erwise move having expired, and said defendant's default having n noted and entered;

AND, it appearing to the court that there is no just son for delay in entering the within judgment against defendant ert L. Vesco;

NOW, on motion of Shea Gould Climenko & Kramer attor for the plaintiff, and, upon the affidavit of Sheldon D. Camhy sworn to the 2nd day of October, 1973 that defendant Robert L. Vesco is not an infant or incompetent person and is not in the military service of the United States; it is hereby

ORDERED, ADJUDGED AND DECREED that plaintiff have judgment against the defendant Robert L. Vesco as demanded in the complaint herein; and it is further

ORDERED, ADJUDGED AND DECREED that defendant Robert Vesco be, and he hereby is, permanently enjoined from using th assets of plaintiff or its subsidiaries or the proceeds thereo for his own purpose to the loss and detriment of International Controls Corp. and its shareholders; and it is further

ORDERED, ADJUDGED AND DECREED that defendant Robert Vesco account to plaintiff for all profits or gains received h him or those acting in concert with or aiding and abetting hi in the transactions set forth in the complaint herein or in transaction thereafter entered into by him with funds or pro- perty wrongfully held by him by reason of the wrongful acts s forth in the complaint and all injury sustained by plaintiff reason of the acts alleged in the complaint; and it is furthe

ORDERED, ADJUDGED AND DECREED that Robert L. Vesco and he hereby is required to indemnify plaintiff for all liability to others which it has or may incur by reason of th acts alleged in the complaint; and it is further

ORDERED, ADJUDGED AND DECREED that defendant Robert L. Vesco be and he hereby is, liable to plaintiff for all loss, damage, cost and expense arising from the acts alleged in the complaint herein and that the amount of said loss, damage, cost and expense be determined by the Court upon a hearing; and it is further

ORDERED, ADJUDGED AND DECREED that the aforesaid hearing as to plaintiff's loss, damage cost and expense be set down and held on a day designated by plaintiff, upon the plaintiff giving defendant Robert L. Vesco ten days notice of said hearing by registered or certified mail at Brace Ridge Road, Nassau, The Bahamas and 170 Denville Road, Boonton Township, New Jersey 07005; and it is further

ORDERED, ADJUDGED AND DECREED that upon the holding the aforesaid hearing as to plaintiff's damages and the determination of said damages, the within judgment be amended granting plaintiff judgment against defendant Robert L. Vesco for the amount of such loss, damage, cost and expense together with interest and costs and disbursements of this action and that such amended judgment be entered against defendant Robert L. Vesco; and it is further

ORDERED, ADJUDGED AND DECREED that plaintiff shall have the right to apply at the foot of said judgment for such other and further relief as to the Court may seem just and proper in the circumstances.

Charles E. Stewart, Jr.
U.S.D.J.

Affidavit

SECRETARY
7 4 54 PM '74

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,	:	
Plaintiff,	:	Civ. Action No. 73 Civ. 2518
-against-	:	
ROBERT L. VESCO, et al.,	:	AFFIDAVIT
Defendants.	:	

JOSEPH A. BONDI, being duly sworn, deposes and says:

1. I am an attorney associated with the firm of Shea Gould Climenko & Kramer, 330 Madison Avenue, New York, New York 10017, general counsel for International Controls Corp., plaintiff herein.

2. By order dated October 19, 1973, David Butowsky, Special Counsel to International Controls Corp., and I were authorized to effect service of process herein upon defendants Robert L. Vesco, Norman LeBlanc, Stanley Graze, Richard E. Clay Wilbert J. Snipes, Frederic E. Weymar, Gilbert R. J. Straub, C. Henry Buhl III, Ralph P. Dodd, Shirley Bailey, I.O.S., Ltd., Columbus Trust Company, Limited, Bahamas Commonwealth Bank ("BCI International Bancorp, Kilmorey Investments, Ltd., Value Capital Ltd., Global Holdings Ltd., Global Financial Ltd., Butlers Bank Ltd. (now known as Who Holdings Ltd.) and Allan J. Butler.

3. On Monday, October 22, 1973, David Butowsky and I proceeded to Nassau, Bahamas. On Tuesday, October 23, 197

at approximately 9:30 A.M., Mr. Butowsky and I went to the premises in Nassau, Bahamas known as "Charlotte House" in which defendant BCB is located and we ascertained by examining a listing inside the bank premises that BCB was the registered agent for defendants Global Financial Ltd., Global Holdings Ltd. and Kilmorey Investments Ltd. Thereupon, we approached a receptionist situated at a desk on the main banking floor near a stairway providing access to offices on the second floor, including those of certain of the other corporate defendants herein. The receptionist identified herself as Norma Russell. We asked Miss Russell whether Norman LeBlanc, President of BCB, was available for us to deliver some papers. Miss Russell, in our presence, checked by telephone with Mr. LeBlanc's office and told us that she had been authorized to accept papers on Mr. LeBlanc's behalf. We thereupon identified ourselves to Miss Russell and left with her three copies of the Summons and Amended Complaint herein, which were in envelopes marked Global Financial Ltd., Global Holdings Ltd. and Kilmorey Investments Ltd. Miss Russell provided us with a written receipt for the Summons and Amended Complaint herein.

4. Immediately thereafter, a woman who identified herself as Miss Hastie, Norman LeBlanc's secretary, appeared, accompanied by a man who identified himself as a security officer of BCB. I recognized Miss Hastie as being one of Mr. LeBlanc's secretaries from a prior visit to Mr. LeBlanc. Miss Hastie asked us what we wanted and we advised her that we wished to serve defendants in the action herein with a Summons and Amended Complaint. She stated that she could not accept the Summons and Amended Complaint and we stated that Miss Russ

had accepted them.

5. Mr. Butowsky and I thereupon left the BCB by its main entrance and proceeded to a side entrance which we knew from a prior visit led to defendant LeBlanc's office. We proceeded to the wooden door to Mr. LeBlanc's private offices, which was locked, and I affixed to the door a copy of the Summons and Amended Complaint. As I was doing this, Miss Hastie, two uniformed guards and the security officer we met previously ran towards us yelling that we should leave at once. We immediately left and Miss Hastie ripped the Summons and Amended Complaint from the door and threw it at us.

6. Thereafter, at about 10:15 A.M., Mr. Butowsky and I drove to the Sonesta Beach Hotel in Nassau, Bahamas, to seek to attend a shareholders meeting of Investment Properties International, Ltd. ("IPI"), which was scheduled for 10:00 A.M. that morning. Defendants Norman LeBlanc and Gilbert R. J. Straub were listed in the notice of meeting as being shareholders proposed to be selected as members of a committee of inspectors with the power of appointing a liquidator of IPI and we believe that we might possibly be able to serve them personally at the meeting. Upon arriving at the hotel we inquired where the meeting was being held and were advised that the meeting had been adjourned as no quorum had been present and that Messrs. Straub and LeBlanc were also not present.

7. Thereafter, at about 11:30 A.M., Mr. Butowsky an I proceeded to Beaumont House, located in Nassau, Bahamas, in which the offices of defendant Columbus Trust Company, Ltd. are located. We proceeded to the offices of Columbus Trust

Affidavit

Company Ltd. ..d asked to see Mr. Frederick Murray, the Secretary of Columbus Trust Company Ltd. We introduced ourselves to Mr. Murray, advised him why we were in Nassau and I served him with a copy of the Summons and Amended Complaint herein.

8. Thereafter, at about 12:15 P.M., Mr. Butowsky and I went to a premises located on Charlotte Street, Nassau, Bahamas, in which we had been advised defendant Allan J. Butler had his offices. We asked a person present in the office if Mr. Butler was there and a lady who identified herself as Miss Knowles and stated that she was Mr. Butler's secretary advised us that Mr. Butler was in the United States. We asked Miss Knowles if the office was also the office of Butlers Bank Ltd. (now known as Who Holdings, Ltd.) and she stated that it was. After identifying ourselves, we advised Miss Knowles that we were serving Butlers Bank, Ltd. (now known as Who Holdings Ltd.) with a Summons and Amended Complaint herein. She accepted such Summons and Amended Complaint.

9. At about 2:30 P.M. on October 23, 1973, Mr. Butowsky and I went to the residence of Allan J.Butler in Nassau, Bahamas, known as Jacaranda. We rang the doorbell and were greeted by a maid who advised us that it was Mr. Butler's residence but that he was out of the country. We then informed the maid that we wished to serve a Summons and Amended Complaint in the action herein on Allan J. Butler and would leave it with her. She promised us that she would give the Summons and Amended Complaint herein to Mr. Butler upon his return. The road from Mr. Butler's office required that

Affidavit

we pass the premises occupied by BCB and observed that uniformed security guards were patrolling the sidewalk in front of the bank and the entrance to Mr. LeBlanc's office.

10. Thereafter, on October 23, 1973, Mr. Butowsky and I made inquiries from persons as to the possible whereabouts of the individual defendants herein and then sought to locate such persons at various restaurants and other establishments known to be frequented by them.

11. On October 24, 1973, Mr. Butowsky and I engaged the services of a resident of Nassau, Bahamas who was familiar with the roads on New Providence island and who, we believed, would be helpful in locating the residences of various of the defendants herein. At about 1:30 P.M. on October 24, Mr. Butowsky, the local guide and I drove to the offices of BCB, and I entered the main entrance of the bank with copies of the Summons and Amended Complaint herein, which were marked with names of Bahamas Commonwealth Bank, International Bancorp, Kilmorey Investments, Ltd., I.O.S., Ltd., Value Capital Ltd., Global Holdings Ltd. and Global Financial Ltd. As there had guards patrolling the bank premises and the sidewalk outside bank building following our visit on the previous day, and other guards had chased us while we were serving process here on the previous day, we deemed it imprudent to wait in the bank and make extended inquiries as to the presence of officers I deposited the copies of the Summons and Amended Complaint herein with the receptionist in the bank and advised her that these were papers in the action herein being served on BCB on various corporations for which BCB was registered agent

Affidavit

12. Thereafter, Mr. Butowsky, the local guide and I proceeded to the residence located on Brace Ridge Road, Nassau, Bahamas, which we had been advised was the last known residence of, and owned by, defendant Gilbert R. J. Straub and was also the last known residence in Bahamas of defendant Robert L. Vesco and an occasional residence of defendant Norman LeBlanc. This was the same residence at which Mr. Vesco had been personally served with a subpoena by an Assistant United States Attorney and at which plaintiff herein had served Mr. Vesco with the original Summons and Complaint. Upon arriving at such premises, we proceeded to the gate. Two men who identified themselves as gardeners were standing at the gate and asked us what we wanted. We identified ourselves and stated that we wished to serve the Summons and Amended Complaint herein on Messrs. Vesco, LeBlanc and Straub.

13. One of the gardeners proceeded into the house to call BCB and the other gardener remained inside the gate watching us. After approximately ten minutes a car approached, occupied by the same man who had identified himself as a security officer of BCB on the previous day and a man named Charles Evans, who, from our previous visit to Nassau, Bahamas we believed to be employed as a chauffeur by either defendant LeBlanc or for defendant LeBlanc by defendant BCB. These gentlemen asked what we wanted and we identified ourselves and stated that we wished to serve the Summons and Amended Complaint herein on Messrs. Straub, Vesco and LeBlanc. The men said that they could not accept the papers and the man who had previously identified himself as a security officer for Bahamas Commonweal

Bank Affidavit removed a miniature camera from his shirt pocket and proceeded to take photographs of both Mr. Butowksy and me. 669.

14. I thereupon sought to hand copies of the Summons and Amended Complaint herein to the gardeners and they jumped back. I then tossed copies of the Summons and Amended Complaint herein over the gate and onto the driveway inside the premises. One of the gardeners picked them up and handed them to the security officer who threw them into our car. We then drove away.

15. Mr. Butowsky, the local guide and I then drove to the Sonesta Beach Hotel, which we had been informed was one of the customary residences of Mr. LeBlanc in Nassau, Bahamas. I went to the front desk of the Sonesta Beach Hotel, asked for Mr. LeBlanc and was advised that he was not present. I stated that I wished to leave a Summons and Amended Complaint herein for him and was told that I could leave it with the desk clerk, who assured me that he would see that it was promptly given to Mr. LeBlanc.

16. Mr. Butowsky, our local guide and I then proceeded to Knob Hill Apartments, located off East Bay Street, Nassau, Bahamas. We had been advised that Knob Hill Apartments was a known residence of Norman LeBlanc in Nassau, Bahamas. We inquired of one of the residents in the apartment complex where Mr. LeBlanc's apartment was and were advised that Mr. LeBlanc had been known to reside in an apartment on the first floor. We then proceeded to such apartment, and knocked on the door. We received no answer. I there-

Affidavit
upon taped a cc ' of the Summons and Amendc Complaint herein on the doorway of such premises.

17. Mr. Butowsky, our local guide and I then proceeded to a premises in Nassau, Bahamas, located opposite the residence of a Dr. Applewood, which premises, we had been advised, was presently the residence of Miss Wendy Kenyon, and also one of the customary residences of Mr. LeBlanc in Nassau, Bahamas. We rang the doorbell and knocked on the door of such premises and did not receive an answer. We thereupon returned to our hotel.

18. At 8:00 o'clock on the evening of October 24, Mr. Butowsky and I drove to the premises of Miss Wendy Kenyon. We approached the doorway and rang the bell. A person inside with a female voice asked who we were and we identified ourselves as David Butowsky and Joseph Bondi. The person inside refused to open the door and I thereupon taped a copy of the Summons and Amended Complaint herein to the outside of the door.

19. We then proceeded to the Cafe Martinique on Paradise Island, Bahamas, known by us to be a restaurant frequented by various of the defendants herein. We asked a waiter if he had seen Messrs. LeBlanc, Straub, Clay or Vesco that evening and he said he had not but believed that several of them had been present the previous evening. He then searched the restaurant for such persons and advised us that none were present.

Affidavit

20. At approximately 7:00 A.M. on the morning of October 25, 1973,I received a telephone call from a man who identified himself as (and whose voice I recognized as) Norman LeBlanc. Mr. LeBlanc advised me that he was calling from Costa Rica and that our conversation was being tape recorded. He asked that I cease harrassing his secretary by leaving copies of the Summons and Amended Complaint herein taped on the doorway of her residence. I replied that we were not seeking to harrass him or any other persons, but that we were seeking to effect service in the action herein. He then stated that I should govern my actions in accordance with Bahamian law and that such service was not effective under Bahamian law. I advised him that we believed our service to be effective under the laws of the United States of America and that we were seeking to serve him in an action pending in courts of the United States of America. Mr. LeBlanc suggested that I retain Bahamian counsel and repeated that I should cease harrassing him and his secretary.

21. After breakfast on the morning of October 25, 1973, I asked the switchboard operator if I had any messages and she advised me that a man had sought to telephone me at ten minute intervals between 9:30 and 11:00 P.M. on the evening of October 24. I believe that this was Mr. LeBlanc.

22. On the morning of October 25, 1973, Mr. Butowsky and I went to the general post office in Nassau, Bahamas and obtained the Post Office box numbers from the inquiry clerk [illegible] P.O. Strauch,

BEST COPY AVAILABLE

Affidavit

hamas Commonwealth Bank, Allan J. Butler, Butlers Bank, and f Miss Wendy Kenyon. [There is no street mail delivery ervice in the Bahamas]. I thereupon purchased stamps and eposited copies of the Summons and Amended Complaint herein n envelopes addressed to the Post Office boxes of Bahamas ommonwealth Bank; International Bancorp, Kilmorey Investment td., Value Capital Ltd., Global Holdings Ltd., Global Financial td., and I.O.S., Ltd., all c/o Bahamas Commonwealth Bank; obert L. Vesco, Gilbert R. J. Straub, Allan J. Butler, Butlers ank Ltd. (now known as Who Holdings Ltd.) and Norman LeBlanc /o Miss Wendy Kenyon. I then deposited all such envelopes, ith the proper postage affixed, into the mail receptacle ocated in the post office.

23. Thereafter, I went to my hotel to pack and pro- eed to the airport. I noticed that the man who had identified imself as a security guard of BCB and whom I had met previously t the residence at Brace Ridge Road was sitting outside my otel. I thereupon checked out of the hotel, intending to roceed by my rented automobile to the airport. Before leaving aradise Island I noticed that the security officer was follow- ng me in an automobile. I sought to verify that he was follow- ng me by first driving quickly, then slowing down, then halt- ng and then turning on a side road. He continued to follow me nd I determined that it would not be prudent to drive to the irport. I thereupon returned the automobile at the Avis depot n Nassau and proceeded by taxi to the aitport. I did not otice the security guard following the taxi until I reached he main entrance at the airport. At that time, I again noticed

Affidavit

the security guard and upon leaving the taxi at the airport immediately approached a policeman. I pointed out the security guard to the policeman and stated that he had been following me. The policeman stated that he knew the security guard to be a former Nassau policeman and asked me who I was. I identified myself and stated that I had been authorized by a United States court to serve process on various defendants including Robert L. Vesco and Norman LeBlanc and that I believed the security guard to be in their employ. The policeman acknowledged that he also understood this to be the case and said that he would see to it that I would board my airplane without interference. I boarded the airplane and left Nassau, Bahamas without further incident.

Joseph A. Bondi
JOSEPH A. BONDI

Sworn to before me this
twelfth day of November, 1973

Elsie L. Selig

ELSIE L. SELIG
Notary Public, State of New York
No. 31-[illegible]2750
Qualified in New York County
Commission Expires March 30, 1975

- x

[illegible] CONTROLS CORP., :

Plaintiff, :

-against- : Civ. Action No.
73 Civ. 2518 (CLS)

[illegible]CO, et al., :

Defendants. : JUDGMENT

- x

This action having been commenced by the filing of a complaint on the 7th day of June, 1973, and an amended complaint having been filed and an additional summons having been issued on the 7th day of September, 1973, and this court by order dated October 19, 1973, having authorized Joseph A. Bondi and David M. Butowsky to effect service of process herein on defendant Bahamas Commonwealth Bank by Joseph A. Bondi and David M. Butowsky on the 25th day of October, 1973, and proof of such service having been filed in the office of the Clerk of this Court on the 7th day of January, 1973; and

Defendant, Bahamas Commonwealth Bank, having failed to plead, appear, move or otherwise defend with respect to the complaint herein, and the time for said defendant to appear, answer or otherwise move having expired, and said defendant's default having been noted and entered;

AND, it appearing to the court that there is no just reason for delay in entering the within judgment against defendan Bahamas Commonwealth Bank;

NOW, on motion of Shea Gould Climenko & Kramer, attorneys for the plaintiff and upon the affidavit of Sheldon D. Camhy, sworn to the 31st day of January, 1974; it is hereby

ORDERED, ADJUDGED AND DECREED that plaintiff have judgment against the defendant Bahamas Commonwealth Bank as demanded in the complaint herein; and it is further

ORDERED, ADJUDGED AND DECREED that defendant Bahamas Commonwealth Bank be and it hereby is, liable to the plaintiff for damages in the amount of $500,000 together with interest thereon, by reason of the acts alleged in Count XI of the complaint herein; and it is further

ORDERED, ADJUDGED AND DECREED that defendant Bahamas Commonwealth Bank account to plaintiff for all profits or gains received by it or those acting in concert with or aiding or abetting it in the transactions set forth in Count I of the complaint herein or in transactions thereafter entered into by it with funds or property wrongfully held by it by reason of the wrongful acts set forth therein; and it is further

ORDERED, ADJUDGED AND DECREED that Bahamas Commonwealth Bank be and it hereby is required to indemnify plaintiff for all liability to others which it has or may incur by reason of the acts alleged in Count I of the complaint; and it is further

ORDERED, ADJUDGED AND DECREED that defendant Bahamas Commonwealth Bank be and it hereby is, liable to plaintiff for all loss, damage, cost and expense arising from the acts alleged in Count I of the complaint herein and that the amount of said loss, damage, cost and expense be determined by the Court upon a hearing; and it is further,

ORDERED, ADJUDGED AND DECREED that the aforesaid hearing as to plaintiff's loss, damage, cost and expense be set down and held on a day designated by plaintiff, upon the plaintiff giving defendant Bahamas Commonwealth Bank ten days' notice of said hearing by registered or certified mail at P. O. Box N3909, Nassau, The Bahamas; and it is further

ORDERED, ADJUDGED AND DECREED that upon the holding of the aforesaid hearing as to plaintiff's damages and the determination of said damages, the within judgment be amended granting plaintiff judgment against defendant Bahamas Commonwealth Bank for the amount of such loss, damage, cost and expense together with interest and costs and disbursements of this action and that such amended judgment be entered against defendant Bahamas Commonwealth Bank; and it is further

ORDERED, ADJUDGED AND DECREED that plaintiff shall have the right to apply at the foot of said judgment for such other and further relief as to the Court may seem just and proper in the circumstances.

Dated: New York, New York
February 15, 1974

CAO 15

Charles E. Stewart
U. S. D. J.

JUDGMENT ENTERED FEB 19 1974

Raymond F. Burghardt
CLERK

Plaintiff,

73 Civ. 2518 (CES)

ROBERT L. VESCO, HARRY L. SEARS, FRANK G. BEATTY, NORMAN LEBLANC, STANLEY GRAZE, MILTON F. MEISSNER, ULRICH J. STRICKLER, RICHARD E. CLAY, WILBERT J. SNIPES, FREDERIC J. WEYMAR, GILBERT R. J. STRAUB, C. HENRY BUHL III, RALPH P. DODD, ALWYN EISENHAUER, GEORGE PHILLIPE, JOEL GRADY, SHIRLEY BAILEY, VESCO & CO., INC., IOS LTD., COLUMBUS TRUST COMPANY, LIMITED, BAHAMAS COMMONWEALTH BANK, INTERNATIONAL BANCORP, KILMOREY INVESTMENTS LTD., VALUE CAPITAL LTD., GLOBAL HOLDINGS LTD., GLOBAL FINANCIAL LTD., BUTLER BANK, LTD. (now known as WHO HOLDINGS LTD.), ALLAN J. BUTLER, BANK CANTRADE LTD., FAIRFIELD AVIATION CORPORATION, FAIRFIELD GENERAL CORPORATION, SKYWAYS LEASING CORPORATION and MARINE MIDLAND BANK-NEW YORK,

Defendants.

STIPULATION OF DISMISSAL WITH PREJUDICE AS TO DEFENDANTS FAIRFIELD GENERAL CORPORATION, FAIRFIELD AVIATION CORPORATION and SKYWAYS LEASING CORPORATION

U.S. DISTRICT COURT
FILED
MAY 10 1974
S. D. OF N. Y.

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned attorneys for the respective parties that the amended complaint in the within action be dismissed with prejudice and without costs as to defendants Fairfield General Corporation, Fairfield Aviation Corporation and Skyways Leasing Corporation, reserving to plaintiff its rights against the other defendants. This action shall remain pending against the other defendants.

Dated: New York, New York
March 25, 1974

A Member of the Firm
Attorneys for defendants
Fairfield General Corporation
Fairfield Aviation Corporation
and Skyways Leasing Corporation
570 Broad Street
Newark, New Jersey 07102

SHEA GOULD CLIMENKO & KRAMER

By Shea Gould Climenko & Kramer
A Member of the Firm
Attorneys for plaintiff
330 Madison Avenue
New York, New York 10017
Tel.: (212) 661-3200

So Ordered: MAY 13, 1974

Charles E. Stewart, Jr.
U.S.D.J.

Judgement

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INTERNATIONAL CONTROLS CORP., :

Plaintiff, :

-against- :

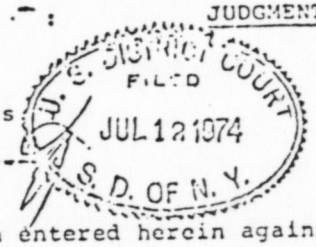
ROBERT L. VESCO, et al., :

Defendants :

----------x

Civ. Action No.
73 Civ. 2518 (CES)

JUDGMENT #74,584



A judgment having been entered herein against Robert L. Vesco on October 5, 1973;

AND this cause having been brought on for partial inquest before the Court on May 14 and 22, 1974 and July 12, 1974, after the required notice was given to defendant Robert L. Vesco, and plaintiff having offered proof establishing damages in the amount of $2,188,354.93; it is hereby

ORDERED, ADJUDGED AND DECREED that the plaintiff recover of defendant Robert L. Vesco the sum of $2,188,354.93, plus interest on said sum at the rate of 6% from March 1, 1973, or a total of $2,422,066.72 and that plaintiff have execution therefor; and it is further

ORDERED, ADJUDGED AND DECREED that plaintiff shall have the right to prove such additional loss, damage, cost and expense it has suffered by reason of the acts alleged in the complaint, the amount of such additional loss, damage, cost and expense to be determined by the Court upon an additional hearing or hearings to be held as provided for in said October 5, 1973 judgment.

Dated: New York, New York
July 12, 1974

Charles E. Stewart Jr.
U.S.D.J.

JUDGMENT ENTERED - 7/16/74
Raymond F. Burghardt
CLERK

EXHIBIT F

76-7330

UNITED STATES COURT OF ...

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the fourteenth day of September, one thousand nine hundred and seventy-six.

International Controls Corporation,
Plaintiff-Appellee,

v.

Robert L. Vesco, Harry L. Sears, Frank G. Beatty, Norman LeBlanc, Stanley Graze, Milton F. Meissner, Ulrich J. Strickler, Richard E. Clay, Wilbert J. Snipes, Frederic J. Weymar, Gilbert R.J. Strub, C. Henry Buhl III, Ralph P. Dodd, Alwyn Eisenhauer, George Phillips, Joel Grady, Shirley Bailey, Vesco & Co., Inc., IOS Ltd., Columbus Trust Co., Limited, Bahamas Commonwealth Bank, International Bancorp, Kilmor Investments Ltd., Value Capital Ltd., Butlers Bank, Ltd. (now know as Who Holdings Ltd.) Allan J. Butler, Banc Cantrade Ltd., Fairfi Aviation Corporation, Fairfield General Corporation, Skyways Leas Corporation, and Marine Midland Bank-New York,
Defendants,

~~Vesco & Co., Inc.~~
Defendants-Appellant.

It is hereby ordered that the motion made herein by counsel for the

Vesco & Co.

appellant ~~appellee~~ ~~petitioner~~ ~~respondent~~

by notice of cross-motion dated August 30, 1976 for reconsideration of the issues raised in an earlier appeal (Docket No. 75-7548)

be and it hereby is ~~granted~~ denied.

It is further ordered that

A. DANIEL FUSARO,
Clerk

by: Edward J. Guarda
Senior Deputy Cle

* * * *

BEFORE: HON. ROBERT P. ANDERSON

~~HON. WALTER R. MANSFIELD~~

~~HON. WILLIAM H. MULLIGAN~~
Circuit Judges

D-17
v.1
76-7330

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the fourteenth day of September, one thousand nine hundred and seventy-six.

International Controls Corp.
Plaintiff-Appellee,

v.

Robert L. Vesco, Harry L. Sears, Frank G. Beatty, Norman Leblanc, Stanley Graze, Milton F. Meissner, Ulrich J. Strickler, Richard E. Clay, Wilbert J. Snipes, Frederic J. Weymar, Gilbert R.J. Strub, C. Henry Buhl III, Ralph P. Dodd, Alwyn Eisenhauer, George Phillipe, Joel Grady, Shirley Bailey, Vesco & Vesco, Inc., IOS, Ltd., Columbus Trust Company, Ltd., Bahamas Commonwealth Bank, International Bancorp., Kilmorey Investments Ltd. Value Capital Ltd., Global Houldings Ltd., Global Financial Ltd. (now known as Who Holdings Ltd.) Allan J. Butler, Band Cantrade Ltd. Fairfield AviationaCorporation, Fairfield General Corporation ~~Skyways Leasing Corporation, and~~ Marine Midland Bank-New York,
Defendants,
Vesco & Co., Inc.
Defendant-Appellant.

It is hereby ordered that the motion made herein by counsel for the

~~appellant~~ appellee ~~petitioner~~ ~~respondent~~

by notice of motion dated August 4, 1976 to dismiss the appeal from the United States District Court for the Southern District of New York for lack of jurisdiction

be and it hereby is granted ~~denied~~.

~~It is further ordered that~~

A. DANIEL FUSARO,
Clerk

by: Edward J. Guardaro
Senior Deputy Clerk

* * * *

BEFORE: HON. ROBERT P. ANDERSON

~~HON. WALTER R. MANSFIELD~~

~~HON. WILLIAM H. MULLIGAN~~

Circuit Judges

Order

U.S. DISTRICT COURT
FILED
APR 4 1975
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., : 73 Civ. 2518 (CES)

Plaintiff, :

-against- : ORDER

ROBERT L. VESCO et al., :

Defendants. :

RECEIVED
CHAMBERS
JUDGE STEWART
APR 3 1975

A judgment having been entered herein against Robert L. Vesco on October 5, 1973, which judgment did not establish the specific amounts of damages recovered by the plaintiff from Robert L. Vesco;

AND a judgment having been entered herein against Robert L. Vesco on July 18, 1974, establishing that a portion of the damages recoverable under the judgment of October 5, 1973, amounts to $2,188,354.93, it is hereby

ORDERED, that both of said judgments are and were at the times when they were entered final judgments of this court; and it is further

ORDERED, that no further action of this court or any other court is required before the judgment entered July 18, 1974 may be presented for execution to any court of general jurisdiction in the United States or any foreign court that recognizes the validity of said judgment; and it is further

ORDERED, that the judgment entered July 18, 1974 and the plaintiff's right to have execution thereunder for the amount of $2,188,354.93, are and will be in no way affected by the

EXHIBIT G

Order

plaintiff's right to prove and to recover other amounts pursuant to the judgment entered October 5, 1973.

Dated: New York, New York
April 3, 1975

Charles E. Stewart Jr.
U. S. D. J.

Order

[illegible] DISTRICT OF NEW YORK

[illegible] S.D. OF N.Y.

[illegible] NATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al.,

Defendants.

73 Civ. [illegible] (CHS)

ORDER

A judgment having been entered herein against Robert L. Vesco on October 5, 1973, which judgment did not establish the specific amount of damages recovered by the plaintiff from Robert L. Vesco;

AND a judgment having been entered herein against Robert L. Vesco on July 16, 1974, establishing that a portion of the damages recoverable under the judgment of October 5, 1973, amounts to $2,182,354.93, it is hereby

ORDERED, that both of said judgments are and were at the times when they were entered final judgments of this court; and it is further

ORDERED, that no further action of this court or any other court is required before the judgment entered July 16, 1974 may be presented for execution to any court of general jurisdiction in the United States or any foreign court that recognizes the validity of said judgment; and it is further

ORDERED, that the judgment entered July 16, 1974 and the plaintiff's right to have execution thereunder for the amount of $2,182,354.93, are and will be in no way affected by the plaintiff's right to prove and to recover other amounts pursuant to the judgment entered October 5, 1973; and it is further

EXHIBIT H

Order

ORDERED, that the hereinabove Order shall succeed the Order signed April 3, 1975 and filed by the Clerk of the Court April 4, 1975.

Dated: New York, New York
September 11, 1975

Charles H. Tenney
UNITED STATES DISTRICT JUDGE

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., Plaintiff,	:	Index No. 73 Civ. 251 (CES)
-against-	:	ORDER TO SHOW CAUSE
ROBERT L. VESCO et al., Defendants,	:	

Upon the annexed affidavit of David M. Butowsky, swo to May 21, 1976, and sufficient cause appearing therefore, it is hereby

ORDERED, that defendants Robert L. Vesco, Vesco & Co Inc. and any other party having an interest in the subject mat hereof, show cause before the Honorable Charles E. Stewart, Jr United States District Judge, at the United States Courthouse, Foley Square, New York, New York, Room 2602, on the 26th day o
(CES) May , 1976 at 4:00 p.m. or as soon thereafter as counsel c be heard, why an amended judgment in the form annexed hereto should not be entered herein, nunc pro tunc as of July 12, 197 against Robert L. Vesco pursuant to Rule 60(a) of the Federal Rules of Civil Procedure and in accordance with the decision o the United States Court of Appeals for the Second Circuit date May 13, 1976 in this matter; and it is further

ORDERED, that personal service of a copy of this ord and supporting papers upon Messrs. Hannoch Weisman Stern and Besser, attorneys for defendant Vesco & Co., Inc. on or before
(CES) May 24, 1976 and that service by certified mail, return receip requested (where possible), addressed to defendant Robert L. V

at 170 Denville Road, Boonton Township, New Jersey, 07005, at Brace Ridge Road, Nassau, Bahamas, at c/o General Post Office Flamingo Bay, Guanacosta, Costa Rica and at Curridabat, San Jos Costa Rica, his last known addresses, on or before May 24, 1976 shall be deemed good and sufficient service.

(CES)

DATED: New York, New York
May 21, 1976

/s/ Charles E. Stewart, Jr.,
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-against-

ROBERT L. VESCO, et al.,

Defendants.

Index No. 73 Civ. 2518 (CES)

AMENDED JUDGMENT

A judgment having been entered herein against Robert L. Vesco on October 5, 1973;

AND, this cause having been brought on for partial inquest before the Court on May 14 and 22, 1974 and July 12, 1974, after the required notice was given to defendant Robert L. Vesco, and plaintiff having offered proof establishing damages in the amount of $2,188,354.93 with respect to the claims set forth in Count Two of the Complaint;

AND, it appearing, and the undersigned having expressl determined, that there is no just reason for delay in entering a final judgment against defendant Robert L. Vesco with respect to the claims set forth in the Second Count of the Complaint and so much of the Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Eleventh Counts as relate to claims arising out of (a) the dividend in kind of the outstanding shares of Fairfield General Corporation declared by International Controls Corp. in late 1970; (b) the purchase by Skyways Leasing Corporation of a Boeing 707 airplane in June of 1971 with funds contributed to Skyways Leasing Corporation by International Controls Corp.; (c) the lease between International Controls Corp. and Skyways Leasing Corporation relating to the Boeing 707 airplane and all

payments made by International Controls Corp. thereunder and (d) all monies paid by International Controls Corp. in connectio with defendant Robert L. Vesco's use of the Boeing 707 airplane; and the undersigned having hereby expressly directed the entry o final judgment with respect to said claims; it is

ORDERED, ADJUDGED AND DECREED that plaintiff recover of defendant Robert L. Vesco the sum of $2,188,354.93 plus interest on said sum at the rate of 6% from March 1, 1973 or a total through July 12, 1974 of $2,422,466.72 with respect to the claims asserted in the Second Count of the Complaint and so much of the Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Eleventh Counts as relate to claims arising out of (a) the dividend in kind of the outstanding shares of Fairfield General Corporation declared by International Controls Corp. in late 1970; (b) the purchase by Skyways Leasing Corporation of a Boeing 707 airplane in June of 1971 with funds contributed to Skyways Leasing Corporation by International Controls Corp.; (c) the lease between International Controls Corp. and Skyways Leasing Corporation relating to the Boeing 707 airplane and all payments made by International Controls Corp. thereunder and (d) all monies paid by International Controls Corp. in connecti with defendant Robert L. Vesco's use of the Boeing 707 airplane; and that the plaintiff have execution therefore; and it is further

ORDERED, ADJUDGED AND DECREED that plaintiff shall ha a right to prove such additional loss, damage, cost and expense as it has suffered by reason of the claims alleged in the Complaint, other than those as to which judgment has been hereinabove granted the amount of any such additional loss,

damage, cost and expense to be determined by the Court upon an additional hearing or hearings to be held as provided for in sa October 5, 1973 judgment; and it is further

ORDERED, that this judgment be and the same hereby is entered nunc pro tunc as of July 12, 1974.

_____
U.S.D.J.

Judgment Entered

_____
Clerk

1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

INTERNARIONAL CONTROLS, CORP., :

Plaintiff, : 73 Civ. 2518 (CES)

-against- : AFFIDAVIT

ROBERT L. VESCO, et al., :

Defendants. :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

DAVID M. BUTOWSKY, being duly sworn, deposes and says:

1. I am the Court appointed Special Counsel for plaintiff, International Controls Corp. ("ICC"). I make this affidavit in support of ICC's motion for the entry of an amended judgment pursuant to Rule 60(a) of the Federal Rules of Civil Procedure and in accordance with the May 13, 1976 decision of the United States Court of Appeals for the Second Circuit.

2. By decision dated May 13, 1976, a copy of which is annexed hereto as Exhibit A, the United States Court of Appeals for the Second Circuit, acted on an appeal by Vesco & Co. from this Court's August 22, 1975 decision, remanded the case to this Court for further proceedings, specifically for clarification of this Court's July 12, 1974 judgment. More particularly, the Court of Appeals found that the absence of the Rule 54(b) certification from the July 12, 1974 judgment gave rise to a question with respect to the finality of that judgment. The Court stated, however, that a Rule 54(b) certification could be entered if it was determined that the July 12, 1974 judgment

established all damages for one or some of the claims asserted by ICC against Robert L. Vesco in its complaint and allowed for future proof of damages only on the remaining claims. If this was the case, the Court of Appeals said a Rule 54(b) certification would be proper with respect to those claims for which all damages had been proven.

3. An examination of the complaint herein, a copy of which is annexed hereto as Exhibit B, and the proof submitted by ICC at the partial inquest held in may and July of 1974* demonstrates that ICC presented evidence with respect to all of the damages claimed by reason of the acts complained of in the Second Count of the complaint. In short, all of the damages established were a result of Vesco's scheme to obtain control of assets of ICC at ICC's expense by means of a transaction in securities i.e., the dividend in kind by ICC of its Fairfield General Corporation stock. Specifically, ICC was damaged by reason of the (a) purchase by Skyways Leasing Corporation of a Boeing 707 airplane, with funds advanced by ICC; (b) the payment of sums under an onerous lease with respect to said airplane and (c) the payment of expenses incurred in connection with the maintenance and operation of said airplane. Thus, it was established at the partial inquest that ICC had advanced $343,750 toward the purchase of the Boeing 707 for which it was not reimbursed and had paid $1,844,609.93 in connection with the operation and maintenance of the aircraft. This latter amount included all monies paid by ICC under the so-called Skyways Lease for which it was not reimbursed. Thus the total damages established under these two items was $2,188,354.93.

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* Annexed hereto as Exhibit "C" is a copy of the affidavit of Robert Ost, sworn to June 12, 1974. This affidavit summarizes the proof submitted at the partial inquest.

4. As can be seen from an examination of the Second Count of the Complaint, these are precisely the items of damage complained of therein. For example, paragraph 21 of the complaint alleges that the transaction in securities by which ICC, in the form of a dividend in kind of its Fairfield General Corporation stock, was in furtherance of Vesco's scheme to acquire for his own personal use the Boeing 707 which would then be operated and maintained at ICC's expense. Paragraph 23 alleges that $343,750 of the purchase price, the amount established at the inquest, was paid with funds advanced by ICC. Moreover, paragraph 24 alleges facts covering the lease, including the payments ICC was required to make thereunder, which were also established at the inquest. Paragraph 27 alleges that Vesco deceived the independent members of the board into continuing to make payments under the lease and further alleged that ICC had not been reimbursed for expenses incurred in connection with the maintenance and operation of the Boeing 707. Damages in connection with these items are demanded.

5. From the above, it can be seen that ICC established at the partial inquest all damages it claims to have suffered by reason of the acts complained of in the Second Count of the Complaint. Under the Court of Appeals May 13, 1976 decision, a Rule 54(b) certification would be proper with respect to s id claims. Therefore, the amended judgment which ICC seeks to have entered contains a Rule 54(b) certification with respect to all of the claims set forth in the Second Court and so much of the other counts which relate to the transaction alleged in the Second Count, specifically, the Fairfield General Corporation

dividend in kind and the purchase, leasing and use of the Boeing 707 aircraft. It is, therefore, respectfully requested that the amended judgments submitted herewith be signed and entered.

David M. Butowsky

Sworn to before me this
21st day of May, 1976.

RENEE SACKS
NOTARY PUBLIC, State of New York
No. 41-7445
Qualified in New York County
Commission Expires March 30, 1977

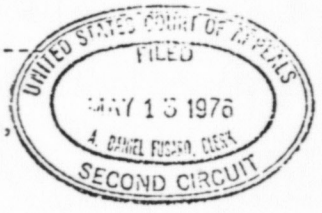
UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 694 - September Term, 1975

(Argued March 8, 1976 Decided May 13, 1976

Docket No. 75-7548



INTERNATIONAL CONTROLS CORP.,
Plaintiff-Appellee,

v.

ROBERT L. VESCO, et al.,
Defendants,

and

VESCO & CO., INC.,
Defendant-Appellant.

Before: KAUFMAN, Chief Judge, SMITH and ANDERSON, Circuit Judges.

Appeal from order permitting execution against corporate assets on default judgment against individual. Remanded for clarification of judgment and determination of specific claims on which money judgment entered.

JAMES J. SHRAGER, Newark, N.J. (Hannoch, Weisman, Stern & Besser, Newark, N.J., Susan I. Littman, on the brief), and Arum, Friedman & Katz, New York, N.Y., for Appellant.

MILTON S. GOULD, New York, N.Y. (Shea, Gould, Climenko, Kramer & Casey, New York, N.Y., Daniel L. Carroll, of counsel), for Appellee.

Exhibit A

SMITH, Circuit Judge:

Vesco & Co., Inc. (hereinafter the Company) is a personal holding company owned and controlled by financier Robert L. Vesco (hereinafter Vesco) and his family. The Company appeals from a decision rendered against it on August 22, 1975, in the United States District Court for the Southern District of New York (Charles E. Stewart, Jr., Judge). That decision permits plaintiff-appellee International Controls Corp. (hereinafter ICC) to pierce the Company's corporate veil and use the Company's corporate assets to satisfy a judgment entered against Vesco personally.

For the reasons outlined below, we remand this controversy to the district court for further proceedings.

I. Background

The instant appeal stems from the continuing efforts of ICC to recover damages against Vesco, his associates and various corporations controlled by the Vesco interests. Since the earlier stages of this saga have been examined elsewhere, International Controls Corp. v. Vesco, 490 F.2d 1334 (2d Cir. 1974), it is necessary for us to describe here only the most recent events in this extended litigation.

On June 7, 1973, the Special Counsel for ICC filed an action charging Vesco, Vesco's associates and many of the companies controlled by Vesco with having violated §10(b) of the Securities Exchange Act of 1934, Rule 10b-5 of the Securities and Exchange Commission and a variety of common law fiduciary duties. 15 U.S.C. §78j(b), 17 C.F.R. §240.10b-5. The heart of ICC's complaint against Vesco and his co-defendants is their alleged waste and misuse of ICC's corporate assets to the detriment of ICC's other shareholders.

On October 5, 1973, a default judgment was entered against Vesco, as a result of Vesco's failure to appear in the South District of New York along with the other defendants. The judgment of October 5, 1973, while establishing Vesco's personal liability, did not fix the amount of damages.

Following several hearings on the question of damages, a second default judgment was entered against Vesco on July 12 1974. This latter judgment specified damages of $2,422,466. but left open the possibility that ICC might be able to prov further damages in subsequent proceedings.

Thus armed with two default judgments against Vesco, IC attempted to satisfy its judgments with the corporate assets of the Company. ICC argued that the facts of the case warranted the piercing of the Company's corporate veil and t use of the assets of the Company to satisfy the judgments entered against Vesco personally. On August 22, 1975, Judge Stewart accepted ICC's arguments and issued an order authori ICC to satisfy its default judgments against Vesco with the assets of the Company.

It is from the order of August 22, 1975, that the Compa appeals.

The Company advances four arguments for the reversal of Judge Stewart's order of August 22, 1975. First, the Compar asserts that it was improper for the district court to pierc the Company's corporate veil and allow ICC to use the Compar assets to satisfy personal judgments against Vesco.

Second, the Company argues that the two default judgmer which the execution order of August 22, 1975, is intended tc satisfy were entered improperly since the Company was denie the right to present Vesco's personal defenses before the er

of the d ult judgments. Had Vesco n present to defend himself, the Company asserts, he would have raised two issues, alleged defects in the service upon him and alleged defects in ICC's pleadings below. Had these defenses been entertained by the court, the Company continues, they would have prevented the entry of default judgments against Vesco and thereby would have eliminated the basis for the subsequent execution order against the Company. It was thus a mistake, the Company concludes, for Judge Stewart to forbid the Company to raise those personal defenses on Vesco's behalf.

The Company argues, third, that certain assets which it holds are owned beneficially by Vesco's children and that those assets should be removed from the scope of the August 22, 1975, execution order. Finally, the Company asserts that the two default judgments entered against Vesco were not final and that, therefore, they cannot provide the basis for the subsequent execution order issued against the Company on August 22, 1975.

Since it is unclear from the record below whether, in fact, the default judgments against Vesco were final and therefore subject to execution, we remand for further proceedings.

II. The Issue of Finality

It is well-established that "execution ordinarily may issue only upon a final judgment." Redding & Co. v. Russwine Construction Corp., 417 F.2d 721, 727 (D.C. Cir. 1969); 33 C.J.S. Executions §6c.

The order issued by Judge Stewart on August 22, 1975, was the first step in ICC's efforts to secure execution of the two default judgments entered earlier against Vesco. Hence, the validity of the August 22, 1975, execution order against the Company depends upon the finality of the earlier default

judgments which that execution order is intended to satisfy. Only if the underlying judgments against Vesco are final is the subsequent execution order against the Company valid.

The Company argues that the default judgments entered against Vesco were not final. The Company points out that the first judgment entered against Vesco on October 5, 1973, did not specify the damages owed by Vesco to ICC. The failure to so specify, the Company claims, makes the first judgment interlocutory, rather than final, in nature.[1/]

With respect to the second judgment entered on July 12, 1974, the Company points out that the judgment affords ICC the opportunity to prove additional damages in subsequent proceedings.[2/] In addition, the Company points out that the judgment of July 12, 1974, does not contain the certification of finality required by Rule 54(b) of the Federal Rules of Civil Procedure in cases, such as this, where judgment is entered against one defendant while the other co-defendants continue to contest liability in the district court. Fed. R. Civ. P. 54(b).[3/]

These two flaws in the second judgment, the Company maintains, make that judgment interlocutory also. Hence, the Company concludes, neither judgment against Vesco is final and thus the execution order issued against the Company on August 22, 1975, is invalid in the absence of an underlying final judgment.[4/]

It is the position of ICC that the second judgment issued on July 12, 1974, is final and therefore provides a proper basis for the August 22, 1975, execution order issued against the Company.[5/] On the question of the Rule 54(b) certification ICC points out that the first judgment did contain such a

certification.[6] Since the second judgment [illegible] is an extension of the first,[7] ICC asserts, the Rule 54(b) certification of the first judgment must be imputed to the second.

Furthermore, ICC maintains that a judgment, such as the second judgment issued on July 22, 1975, is final as long as it specifies some amount of damages which the plaintiff can collect. Finality, ICC argues, does not require that a judgment specify all damages as long as it provides a minimal dollar figure which the plaintiff can collect while proving additional damages.

This court has repeatedly stressed the importance of strict adherence to the certification requirements of Rule 54(b). See, e.g., Browning Debenture Holders Committee v. DASA Corp., 524 F.2d 811, 814 n. 4 (2d Cir. 1975); Wright & Miller, Federal Practice and Procedure: Civil §2660. The confusion surrounding the instant appeal demonstrates the need for such careful compliance.

We are frankly unsure whether the district court originally intended for the Rule 54(b) certification contained in its first judgment to apply to its second judgment as well. While that is one reasonable interpretation of the second judgment and while Judge Stewart indicated about one year after entry of the second judgment that this interpretation was the proper one, the very terms of Rule 54(b) require that certification of finality be "express" so as to avoid any ambiguity.

The failure to comply with the literal requirements of Rule 54(b) with respect to the second judgment might not, by itself, have compelled a remand to the district court although, as we noted in Browning Debenture Holders Committee, supra, we view strict compliance with Rule 54(b) as a matter of the greatest importance. However, other ambiguities in the judgment

of July 12, 1974, compel us to return this case to the district court. In particular, the decision of the district court to allow for additional proof of damages prevents us from characterizing the second judgment of July 12, 1974, as final.

"A 'final decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Catlin v. United States, 324 U.S. 229, 233 (1945). The judgment of July 12, 1974, does not end this litigation with respect to Robert L. Vesco: ICC retains the right to appear and assert additional damages against him. Because the judgment leaves ICC that option, it cannot be viewed as final since finality implies that, after the entry of judgment, the court will concern itself with nothing other than the mechanics of execution.

The circumstances here are quite similar to the facts in United States v. Burnett, 262 F.2d 55 (9th Cir. 1958, 1959). In Burnett, an airline passenger sued the United States for injuries sustained as a result of poor maintenance at a federally-owned airport. After finding for the plaintiff on the issue of liability and after deciding on part of the damage award to which the plaintiff was entitled, the district court entered a judgment declaring the government's liability under the Federal Tort Claims Act and fixing partial damages. However, the district court in Burnett, like the district court here, left open the possibility that the plaintiff might prove additional damages at a later date.

On appeal, the Court of Appeals for the Ninth Circuit held that "the legal effect of what the [district] court did was to announce and enter an interlocutory decision." Because the provision allowing for proof of future damages "made it clear that the [district] court had not finally disposed of the

law suit," the judgment could not be construed as final. Burnett, supra at 59.

Burnett was cited with approval by this court in Aetna Casualty & Surety Co. v. Giesow, 412 F.2d 468 (2d Cir. 1969). While there were other grounds for our decision in Giesow, we indicated on the authority of Burnett that a judgment fixing certain damages but not others could not be considered final. Giesow, supra at 470.

In short, a judgment cannot be considered final as long as it leaves open the question of additional damages. The essence of a final judgment is that it leaves for the court nothing to do but order execution.

There is, however, one aspect of the situation here which distinguishes it from Burnett and Giesow and which leads us to remand, rather than reverse, the decision below. In both Burnett and Giesow, the plaintiffs advanced a single claim. Here, in contrast, ICC asserts multiple claims against Vesco alleging violations of §10(b) of the Securities Exchange Act of 1934, violations of Rule 10b-5 of the Securities and Exchange Commission, breach of fiduciary duties, waste of corporate assets, fraud, and corporate self-dealing.

In a situation, such as that on appeal, where liability is established on multiple claims, Rule 54(b) authorizes the district court to determine the damages stemming from some of the claims and to enter final judgments with respect to them, while retaining jurisdiction over the other claims in which damages have not yet been proven. Such a procedure is not required in multi-claim suits, but it is permitted if the district court makes the proper certification. Fed. R. Civ. P. 54(b); see also Wright & Miller, Federal Practice and Procedure:

Civil §§2653 54.

Burnett and Giesow establish that, for a final judgment to be entered on any one claim, all damages stemming from that claim must be fixed. Rule 54(b) establishes that final judgments may, at the court's discretion, be entered for some claims while the court retains jurisdiction over the others. However, for a claim to be the subject of a final judgment and certification under Rule 54(b), the requirements of Burnett and Giesow must be met with respect to that particular claim. In other words, the district court may utilize its Rule 54(b) powers with respect to a given claim only if all damages stemming from that claim have been fixed.

It is unclear from the record below whether the district court applied these rules properly in this case. If the judgment of July 12, 1974, allows ICC to prove further damages for each and every of its claims against Vesco, then no Rule 54(b) certification can be entered for any of the claims since such certification and final judgment are permissible with respect to any one claim only if all damages stemming from that claim have been fixed. However, if the judgment of July 12, 1974, is to be understood as establishing all damages for some of the claims and allowing future proof of damages for the remaining claims only, then Rule 54(b) certification is proper with respect to those claims for which all damages have been proven.

In short, the judgment of July 12, 1974, is susceptible to two interpretations, one which is consistent with Rule 54(b) certification, the other which is not. Accordingly, we remand for the entry of a new judgment to clarify for which, if any, of the claims against Vesco all damages have been computed. If the damage award of $2,422,466.72 entered on

July 12, 1974, was intended to include all the damages from any of the claims against Vesco, those specific claims for which no further damages may be proven may be the subject of a final judgment and Rule 54(b) certification. However, the claims on which ICC is still free to prove additional damages may not be subject to a final judgment or Rule 54(b) certification.

III. Summary

In summary, we remand to the district court for an apportionment among the various claims raised by ICC of the damages assessed by the district court on July 12, 1974. For those claims for which further damages may not be proven, the district court may enter a final judgment and, if it chooses, provide for explicit Rule 54(b) certification. However, the district court must retain jurisdiction over the remaining claims for which ICC may prove additional damages. No final judgment may be entered with respect to any of those claims until all damages have been assessed.

In light of our decision to remand for the reasons stated above, it is unnecessary for us to reach the other arguments raised by the Company on appeal.

Remanded.

Footnotes

1/ The judgment of October 5, 1973, reads as follows:

Judgment .

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INTERNATIONAL CONTROLS CORP.,
Plaintiff

-against-

ROBERT L. VESCO, et. al.,
Defendants.

Civ. Action No.
73 Civ. 2518 (CES)

JUDGMENT

----------x

This action having been commenced by the filing of a complaint and the issuance of a summons on the 7th day of June, 1973, and this court by order dated July 27, 1973, having authorized Lois Sylor Yohonn to effect service of process herein on defendant Robert L. Vesco, and a copy of the said summons and complaint having been duly served on defendant Robert L. Vesco by Lois Sylor Yohonn on the 30th day of July, 1973, and proof of such service having been filed in the office of the Clerk of this Court on the 6th day of August, 1973; and

Defendant, ROBERT L. VESCO, having failed to plead, appear, move or otherwise defend with respect to the complaint herein, and the time for said defendant to appear, answer or otherwise move having expired, and said defendant's default having been noted and entered;

AND, it appearing to the court that there is no just reason for delay in entering the within judgment against defendant Robert L. Vesco;

NOW, on motion of Shea Gould Climenko & Kramer attorneys for the plaintiff, and, upon the affidavit of Sheldon D. Camhy, sworn to the 2nd day of October, 1973 that defendant Robert L. Vesco is not an infant or incompetent person and is not in the military service of the United States; it is hereby

ORDERED, ADJUDGED AND DECREED that plaintiff have judgment against the defendant Robert L. Vesco as demanded in the complaint herein; and it is further

ORDERED, ADJUDGED AND DECREED that defendant Robert L. Vesco be, and he hereby is, permanently enjoined from using the assets of plaintiff or its subsidiaries or the proceeds thereof for his own purpose to the loss and detriment of International Controls Corp. and its shareholders; and it is further

1/ (cont'd)

ORDERED, ADJUDGED AND DECREED that defendant Robert L. Vesco account to plaintiff for all profits or gains received by him or those acting in concert with or aiding and abetting him in the transactions set forth in the complaint herein or in transaction thereafter entered into by him with funds or property wrongfully held by him by reason of the wrongful acts set forth in the complaint and all injury sustained by plaintiff by reason of the acts alleged in the complaint; and it is further

ORDERED, ADJUDGED AND DECREED that Robert L. Vesco be and he hereby is required to indemnify plaintiff for all liability to others which it has or may incur by reason of the acts alleged in the complaint; and it is further

ORDERED, ADJUDGED AND DECREED that defendant Robert L. Vesco be and he hereby is, liable to plaintiff for all loss, damage, cost and expense arising from the acts alleged in the complaint herein and that the amount of said loss, damage, cost and expense be determined by the Court upon a hearing; and it is further

ORDERED, ADJUDGED AND DECREED that the aforesaid hearing as to plaintiff's loss, damage cost and expense be set down and held on a day designated by plaintiff, upon the plaintiff giving defendant Robert L. Vesco ten days notice of said hearing by registered or certified mail at Brace Ridge Road, Nassau, The Bahamas and 170 Denville Road, Boonton Township, New Jersey 07005; and it is further

ORDERED, ADJUDGED AND DECREED that upon the holding of the aforesaid hearing as to plaintiff's damages and the determination of said damages, the within judgment be amended granting plaintiff judgment against defendant Robert L. Vesco for the amount of such loss, damage, cost and expense together with interest and costs and disbursements of this action and that such amended judgment be entered against defendant Robert L. Vesco; and it is further

ORDERED, ADJUDGED AND DECREED that plaintiff shall have the right to apply at the foot of said judgment for such other and further relieve [sic] as to the Court may seem just and proper in the circumstances.

/s/ Charles E. Stewart, Jr.
U.S.D.J.

2/ The judgment of July 12, 1974, reads as follows:

Judgement [sic]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,
Plaintiff,

-against-

ROBERT L. VESCO, et al.,
Defendants.

Civ. Action No.
73 Civ. 2518 (CES)

JUDGMENT #74,584

A judgment having been entered herein against Robert L. Vesco on October 5, 1973;

AND this cause having been brought on for partial inquest before the Court on May 14 and 22, 1974 and July 12, 1974, after the required notice was given to defendant Robert L. Vesco, and plaintiff having offered proof establishing damages in the amount of $2,188,354.93; it is hereby

ORDERED, ADJUDGED AND DECREED that the plaintiff recover of defendant Robert L. Vesco the sum of $2,188,354.93, plus interest on said sum at the rate of 6% from March 1, 1973, or a total of $2,422,466.72 and that plaintiff have execution therefor; and it is further

ORDERED, ADJUDGED AND DECREED that plaintiff shall have the right to prove such additional loss, damage, cost and expense it has suffered by reason of the acts alleged in the complaint, the amount of such additional loss, damage, cost and expense to be determined by the Court upon an additional hearing or hearings to be held as provided for in said October 5, 1973 judgment.

Dated: New York, New York
July 12, 1974

/s/ Charles E. Stewart, Jr.
U.S.D.J.

3/ Rule 54(b) reads as follows:

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of

3/ (cont'd)

such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Fed. R. Civ. P. 54(b).

4/ The Company also argues that, notwithstanding the terms of Rule 54(b), the decision of the United States Supreme Court in Frow v. De La Vega, 82 U.S. 552 (1872), still forbids the entry of a final judgment against one defendant while the others continue to contest liability in the district court. We think it is most unlikely that Frow retains any force subsequent to the adoption of Rule 54(b). In any event, at most, Frow controls in situations where the liability of one defendant necessarily depends upon the liability of the others. Redding & Co. v. Russwine Construction Corp., 463 F.2d 929, 932-33 (D.C. Cir. 1972). Since Vesco's liability in the instant setting does not depend upon that of any of his co-defendants, Vesco cannot avail himself of whatever authority Frow might retain.

5/ ICC makes no attempt on appeal to argue that the judgment of October 5, 1973, constitutes a final judgment. Since that judgment specifies no damages whatsoever, it, of course, cannot be considered final. Western Geophysical Co. of America, Inc. v. Bolt Associates, Inc., 463 F.2d 101 (2d Cir. 1972), cert. denied, 409 U.S. 1040 (1972).

6/ See note 1, supra, ¶3.

7/ See note 2, supra, ¶¶1 and 4.

International Controls
Corp. v. Vesco & Co.,
Inc.

75-7548

I concur
5/7/76
QKK

75-7548
International Controls
Corp. v. Vesco, et al

I concur.
T-P-A.

May 7, 1976

EXHIBIT B, Complaint, omitted.
See Complaint elsewhere in index.

EXHIBIT C, Affidavit of Robert S. Ost

Exhibit C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

INTERNATIONAL CONTROLS CORP., : 73 Civ. 2518 (CES)

Plaintiff, :

- against - : AFFIDAVIT

ROBERT L. VESCO, et al., :

Defendants. :

----------x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ROBERT S. OST, being duly sworn, deposes and says:

1. I am the controller of INTERNATIONAL CONTROLS CORP. ("ICC"). I make this affidavit in connection with the hearing commenced herein on May 14, 1974 and continued on May 22, 1974 before the Honorable CHARLES E. STEWART, JR. for the purpose c making a partial determination of ICC's loss, damage costs and expenses for which defendant, ROBERT L. VESCO, has been found liable to ICC in the judgment heretofore entered on October 5, 1973. I have been informed by counsel that, when the hearing resumes, this affidavit will be offered into evidence along wi all of the various exhibits* which will be referred to herein a which have been pre-marked.

2. My employment with ICC began in September of 1970 as consolidation manager. During 1972 and up through November of

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*Referred to herein as "Pl. Ex. ".

that year, I was the assistant controller of ICC. Beginning i December of 1972, I assumed my present position as controller. As assistant controller (and as controller) my responsibilitie included the general supervision of ICC's accounting departmer This included the processing of invoices received by ICC, invc ing obtaining approval of said invoices, seeing that the invoi were paid and making appropriate entries in ICC's books to ref such payments. My responsibilities also encompassed the supe: vision of ICC's payroll and the reimbursement of various emplc for expenses incurred in the course of their employment.

3. All of the items referred to herein relate to vario expenses incurred by ICC in connection with the purchase, mai tenance and operation of a certain Boeing 707 aircraft, regis number N11RV, (the "Boeing 707"). This aircraftwas purchased SKYWAYS LEASING CORPORATION ("SKYWAYS") in June of 1971 from PAN AMERICAN AIRWAYS. The purchase price was $1,375,000, of which $343,750 was paid with funds advanced to SKYWAYS by ICC This advance was made to SKYWAYS in two checks, one totalling $100,000 (Pl. Ex. 2) and the other totalling $260,000 (Pl. Ex of which $243,750 was in payment of the above advance. The $260,000 check also included an intercompany advance of $16,2 to SKYWAYS. ICC was never reimbursed for any part of this $343,750 advance.

4. At the time it purchased the Boeing 707, SKYWAYS wa a wholly owned subsidiary of FAIRFIELD AVIATION CORPORATION ("FAIRFIELD AVIATION"), which was in turn, a wholly owned sul sidiary of ICC. On December 9, 1971, ICC organized a poration called FAIRFIELD GENERAL CORPORATION ("FAIRFIELD GENERAL") and transferred all of the outstanding shares of F FIELD AVIATION to FAIRFIELD GENERAL. In February of 1972, I

distributed to its shareholders of record on February 7, 1972 all of the shares of FAIRFIELD GENERAL as a dividend in kind.

5. During 1971, ICC incurred various costs in connectic with the maintenance and operation of the Boeing 707 and was reimbursed by various parties for all of said costs. During : and through the first few months of 1973, ICC continued to pa monies in connection with the operation and maintenance of th Boeing 707 but, has not, with certain exceptions, been reimbu for any of said costs.*

6. In general, the payments made by ICC during 1972 an 1973 in connection with the maintenance and operation of the Boeing 707 were in respect of the following items:

(a) Payments to SKYWAYS under a certain lease between SKYWAYS and ICC dated October 1, 1971.

(b) Payments made to SKYWAYS pursuant to said lease as a reserve for engine overhaul.

(c) Salary paid by ICC to the crew of the Boeing 707.

(d) Payments made to the crew of the Boeing 707.

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*The total amount paid by ICC during 1972 and 1973 was $2,401,693.46. After (i) deducting $522,089.58 for payments made to ICC in reimbursement of said expenses in December of 1972 and January of 1973, (ii) deducting an overpayment made connection with the December, 1971 expenses ($5,373.80), (iii deducting a credit resulting from cash received by ICC in 197 in payment of 1971 billings which were overstated for the eng overhaul reserve ($31,578.10) and (iv) adding a small adjustm ($1,952.55) to reconcile the figure to the amount paid by ICC for which it was not reimbursed, such amount totals $1,844,6(This figure of $1,844,604.93 agrees with the outstanding amo shown on ICC's General Ledger.

to reimburse them for expenses they reportedly incurred in connection with their employment.

(e) Gas and Oil.

(f) Ground Service.

(g) Landing Fees.

(h) Repairs and Maintenance.

(i) Miscellaneous Expenses.

7. In order to facilitate the determination of the amoun paid by ICC in respect of items listed above, I have recently prepared a number of schedules including the following:

(a) Pl. Ex. 4a* - lists the amounts paid by ICC in respect of the above listed items for each month in 1972 and for 1973.

(b) Pl. Ex. 5a* - reflects various credits to the total amount listed on Pl. Ex. 4a and shows the total amount paid by ICC for which it was not reimbursed.

(c) Pl. Ex. 6 - summarizes the amounts paid by ICC in respect of the first two items listed above (rent and engine overhaul reserve) and the manner in which such payments were made.

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*Plaintiff's Ex. 4a and 5a represent revisions of Pl. Ex. 4 and 5 which were marked for identification at the hearing held on May 14, 1974 and, with the exception of certain entries which will be referred to herein (See footnotes on pp. 5, 11, 13 and is identical to Pl. Ex. 4 and 5.

(d) Pl. Ex. 33a - summarizes the total amounts paid by ICC to the crew of the Boeing 707 in reimbursement of expenses reportedly incurred and paid by the crew in connection with their employment.

8. The above listed schedules were prepared by me based upon information obtained from the books and records of ICC including its general ledger, payroll journal, voucher registe cash receipts journal, general journal and various schedules I had prepared at or about the time the payments were made and f documents obtained from ICC's files. Each entry on Pl. Ex. 4a supported by various documents all of which have been marked a exhibits. The remainder of this affidavit will, for the most part, deal with this supporting documentation. However, I wis to state at this time that, based upon my position of assistan controller and controller of ICC in 1972 and 1973 and, upon my knowledge of the operation of ICC's accounting department and books and records, I know for a fact that payments were made b ICC for each of the amounts listed on Pl. Ex. 4a.

Lease Payments and Engine Overhaul Reserve Payments

9. The amounts listed on Pl. Ex. 4a next to the heading "Rent" and "Engine Overhaul Reserve"* represent payments made ICC under a certain lease agreement between ICC and SKYWAYS wi respect to the Boeing 707. The proof which will be offered i respect of such payments includes certain handwritten calcula of the amounts due which were prepared by me at or about the t

*On Pl. Ex. 4 which is superseded by Pl. Ex. 4a, engine overh reserve payments were included under the heading "Repair and Maintenance".

such payments were made and were prepared for the purpose of calculating the amounts due (Pl. Ex. 7, 9, 10, 12, 14, 15, 16 and 18) and documents, including cancelled checks and bank transfer advice reflecting the actual payments made by ICC (Pl. Ex. 8, 9a, 11, 13, 15a, 17, 18a and 19). Pl. Ex. 7, 9, 10, 12, 14, 15, 16 and 18 wer prepared by me in the regular course of ICC's business and it was the regular course of ICC's business to make such memoranda at the time they were prepared.

(a) January, February and March, 1972

10. Pl. Ex. 7 contains my calculations of the amounts due fc rent and the engine overhaul reserve for January, February and March, 1972. The rent due under the October 1, 1971 lease between ICC and SKYWAYS was $83,000 for each month. The amount due in respect of the engine overhaul reserve was $5,290 for January, $9,856 for February and $10,066 for March or a total of $25,212 for the three-month period. The total due for Rent and the engine overhaul reserve for this three-month period was, therefore, $274,212. This amount was paid as follows:

(i) Payment of $23,760.09 made by ICC on SKYWAYS' behalf to QUALITRON AERO, INC. by check #17433 dated January 26, 1972 (Pl. Ex. 8).

(ii) Payment of $100,000 made by ICC on SKYWAYS' behalf to QUALITRON AERO, INC. by check #17432 dated January 26, 1973 (Pl. Ex. 8).

(iii) Payment by ICC to SKYWAYS of $66,151.79*

*$66,151.79 was the amount of the payment due PAN AMERICAN AIRWAYS from SKYWAYS under the mortgage given to PAN AMERICAN by SKYWAYS in connection with the purchase of the Boeing 707.

by check #17818 dated March 10, 1972 (Pl. Ex. 8).

(iv) Payment by ICC to SKYWAYS of $49,953.27 by check #17947 dated March 30, 1972 (Pl. Ex. 8).

(v) Payment by ICC to SKYWAYS of $2,768.75 by check #17933 dated March 28, 1972.

(vi) Credit taken by ICC for $31,578.10 due to overpayment made by ICC for the engine overhaul reserve in the fourth quarter of 1971.

(b) April and May, 1972

11. Pl. Ex. 9 contains my calculations of the amounts due for rent and the engine overhaul reserve for April and May, 197 Again the monthly rent due was $83,000. The amount due in resp of the engine overhaul reserve was $7,460 for April and $5,260 for May or a total of $12,720. Thus the toal due for Rent and the engine overhaul reserve for April and May was $178,720, whi amount was paid to SKYWAYS by ICC in June of 1972 as part of th $329,000 payment reflected in Exhibit 9a.

(c) June, 1972

12. Pl. Ex. 10 contains my calculations of the amount due for rent and the engine overhaul reserve for June, 1972. Addi the engine overhaul reserve of $8,470 to the rent of $83,000 brings the total to $91,470, which was paid as follows:

(i) Payment by ICC to SKYWAYS of $66,151.79 by check #18535 dated June 14, 1972 (Pl. Ex. 11).

(ii) Payment by ICC to SKYWAYS of $25,318.21 by check #18546 dated June 16, 1972 (Pl. Ex. 11).

(d) July, 1972

13. Pl. Ex. 12 contains my calculations of the amount due for rent and the engine overhaul reserve for July, 1972. Addin the engine overhaul reserve of $14,710 to the rent of $83,000 brings the total to $97,710, which amount was paid as follows:

(i) Payment by ICC to SKYWAYS of $35,000 by check #18700 dated July 11, 1972 (Pl. Ex. 13).

(ii) Payment by ICC to SKYWAYS of $62,710 by check #18704 dated July 12, 1972 (Pl. Ex. 13).

(e) August and September, 1972

14. Pl. Ex. 14 contains my calculations of the amount due for rent and the engine overhaul reserve for August and Septemb 1972. Adding the total engine overhaul reserve of $20,288 ($8, for August and $11,848 for September) to the total rent of $166 brings the total to $186,288. This amount was added to the amc due for October and paid as reflected below under the discussic for October and November.

(f) October, 1972

15. Pl. Ex. 15 contains my calculations of the amount due for rent and the engine overhaul reserve for October, 1972. Ac the total engine overhaul reserve of $7,890 to the $83,000 rent brings the total to $90,870. When this is added to the $186,2

due for August and September, as discussed above, the total amount due SKYWAYS from ICC was $277,158. A payment of $66,151 was made with respect to this amount by check #19062 dated Sept 11, 1972 (Pl. Ex. 15a) and the remainder of $208,324.97 (after reduction of $2,681.24 due to ICC for a duplicate payment made ICC in that amount to SKYWAYS) was carried forward to November, 1972 and paid as discussed below. 157

(g) November, 1972

16. Pl. Ex. 16 contains my calculations of the amount due for rent and the engine overhaul reserve for November, 1972. Adding the total engine overhaul reserve of $14,000 to the $83, rent bring the total to $97,000. When this is added to the $208,324.97 brought forward from previous months in respect of these items, the total due was $305,324.97, which amount was paid by the transfer of said amount from ICC's account at Bank of America to SKYWAYS' account at Bank of America and American National Bank and Trust. These transfers are reflected on the two "Advice of Charge" received by ICC from Bank of America in November of 1972 (Pl. Ex. 17).

(h) December, 1972

17. Pl. Ex. 18 contains my calculations of the amount du for rent and the engine overhaul reserve for December, 1972. Adding the total engine overhaul reserve of $16,420 to the $83,000 rent brings the total to $99,420, which amount was pai as follows:

(i) Payment of $83,000 by transfer of funds from ICC's account at Bank of America to SKYWAYS' account at Bank of America (Pl. Ex. 18a).

(ii) Payment of $16,420 by ICC to SKYWAYS by check #19817 dated December 29, 1972 (Pl. Ex. 18a).

(i) January, 1973

18. Under the lease between SKYWAYS and ICC, the monthly rent dropped from $83,000 to $47,000 in 1973. The engine overhaul reserve for January, 1973 was $10,700. Adding this to the $47,000 rent payment brings the total to $57,700, which amount was paid by ICC by the transfer of $57,700 from its account at Bank of America to SKYWAYS' account at Bank of America as reflected on the Advice of Charge received by ICC from Bank of America in January, 1973 (Pl. Ex. 19).

Salaries Paid to the Pilot and Crew of the Boeing 707

19. Exhibits 20 through 32 are pages from ICC's payroll journal for the period January, 1972 through February, 1973. These documents, which were prepared under my supervision, were made in the regular course of ICC's business and it was the regular course of ICC's business to prepare them. The informatic contained in the payroll journal was used for the preparation of the checks given to ICC's employees and specifically, as relevant here, to the members of the crew of the Boeing 707 in payment of their salaries.

20. I am advised by counsel that only those portions of Pl. Ex. 20 through 32, which relate to the crew of the Boeing 70 will be offered into evidence. This would include the entries made on the line opposite the crew members as well as the "recap contained on the payroll journals opposite the heading "SKYWAYS' During the period January, 1972 through February, 1973, the members of the crew of the Boeing 707, at various times, includ

(i)	A. L. EISENHAUER
(ii)	P. H. DOLLIVER
(iii)	M. C. LESHE
(iv)	D. E. McCARTY
(v)	R. M. SALCHOW
(vi)	L. NOTTE
(vii)	R. J. DUSSE
(viii)	V. LaFORGIA
(ix)	J. F. PORTER

All payments made to the above listed individuals were in connect with services performed by them as members of the crew of the Boeing 707.

21. Pl. Ex. 20 through 31 consists of the payroll journals for the months January, 1972 through December, 1972, respectively Each contains a number of sheets reflecting the various amounts paid during that month, each sheet contains a "recap" next to the heading "SKYWAYS", which reflects the total amount paid to the crew of the Boeing 707 in respect of salaries. Adding the total "SKYWAYS" payment reflected on each of the pages making up a particular exhibit from Exhibits 20 through 31 will give the figure shown on Pl. Ex. 4a* under "Salaries" for the particular month.

22. Pl. Ex. 32 represents ICC's payroll journal for January and February, 1973. It consists of four pages, the first reflecting advances in respect of salary made on January 15, 1973, the second reflecting salaries paid on January 31, 1973 (taking into account the January 15, 1973 advance), the third reflecting sala payments made on February 15, 1973 and the fourth representing th severance pay given to the members of the crew on March 8, 1973.

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*Pl. Ex. 4 included, under the heading "Salaries", payroll taxes and blue cross payments made by ICC during June, October, Novemb and December of 1972 with respect to the crew of the Boeing 707. These amounts ($305.26 for June, $335.76 for October, $300.96 fo November and $241.96 for December) have been included under the "Miscellaneous" heading on Pl. Ex. 4a.

To reconcile Pl. Ex. 32 with the 1973 salary figure on Pl. Ex. 4a, one must disregard the amount of the January 15, 1973 advance (as this was taken into account in the January 31, 1973 checks) and subtract the $5,000 advance to Mr. Eisenhauer reflected on the payroll journal for the severance pay.

Expenses of Crew Reimbursed by ICC

23. It was ICC's practice in 1972 and 1973 to advance to the members of the crew of the Boeing 707 certain amounts in respect of expenses to be incurred by them in connection with their employment. The crew members would then submit to ICC (at least quarterly statements of their expenses and these reported expenses would be offset against the amount of the advance. Exhibits 33 through 45 consists of the expense reports submitted by the members of the crew during the months January, 1972 through January, 1973*, respectively. The expense reports contained in these exhibits were prepared by the various members of the crew in the regular course of ICC's business and it was the regular course of ICC's business to have such reports prepared and submitted.

24. The total amounts reported on the expense reports which make up Pl. Ex. 33 through 45 have been summarized by me on Pl. Ex. 33a. The amounts shown on line 33 of Pl. Ex. 33a are the same as the amounts shown under the heading "Expenses" on Pl. Ex. 4a. Such amounts as are reflected on Pl. Ex. 33a and 4a, were actually paid to the members of the crew of the Boeing 707 by ICC during the period involved. All of said expenses were reported by the crew members as having been incurred in connection with the maintenance and operation of the Boeing 707 or in connection with their position as members of the crew of the Boeing 707.

Gas and Oil, Ground Service, Landing Fees, Repairs and Maintenance and Miscellaneous

25. Pl. Ex. 46 through 106 consists of various invoices or

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*Exhibit 45 contains all 1973 expense reports submitted through the date of termination of the employment of the crew members.

statements* received and paid by ICC for the last five items listed on Pl. Ex. 4a. Each exhibit contains invoices for a particular item for a particular month.** With the exception of the instances specifically referred to below, the total amount of the invoices contained as part of each exhibit and, which are in whole or in part shown as having been charged by ICC to its internal account for the Boeing 707 expenses (see page 15) will be the same as the amount shown opposite the particular item on Pl Ex. 4a for a particular month.*** For example, the total amount on the invoices included in Pl. Ex. 46, which is shown as being charged to account 122-2, will be the same as the entry on Pl. Ex. 4a under January, 1972 for "Gas and Oil", the total amount on the invoices included in Pl. Ex. 47, which is shown as being charged

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*Also included in the "Miscellaneous" category are documents reflecting ICC's FICA payments. These documents, bearing the heading "Federal Depository Receipts", reflect (next to the appropriate general ledger account number maintained by ICC for the Boeing 707 expenses [see page 15]) the FICA payments made by ICC on behalf of the crew members.

**The month a particular invoice is included in is determined by when the invoice was entered in ICC's books.

***Pl. Ex. 4 originally included the amounts of $2,761.56 and $1,009.35, respectively, for the February, 1972 "Repairs and Maintenance" and "Miscellaneous" entries. On Pl. Ex. 4a these entries have been changed to $20,905.56 and $4,588.74, respectively. The difference is explained as follows. These two entries on Pl. Ex. 4 took into account a total credit of $31,578.10 ($28,000 for "Repairs and Maintenance" and $3,578.10 for "Miscellaneous") resulting from cash received by ICC in 1972 in payment of billings in 1971 which were overstated for the engine overhaul reserve. This credit of $31,578.10 has been added back into the February entries for "Repairs and Maintenance" and "Miscellaneous" and has been accounted for on Pl. Ex. 5a. Adding the $28,000 and $3,578.10 credits back into the respective entries on Pl. Ex. 4 results in totals of $30,761.56 for "Repairs and Maintenance" and $4,587.45 for "Miscellaneous". Subtracting the February engine overhaul reserve of $9,856 from the $30,761.56 (see footnotes on page 5) leaves $20,905.56, the same as the February "Repairs and Maintenance" entry on Pl. Ex. 4a. The $4,587.45 figure for Miscellaneous is $1.29 lower than the February Miscellaneous entry on Pl. Ex. 4a. ICC's books and records (see Pl. Ex. 107) reflect an unlocated February miscellaneous charge in that amount. The correction of this amount on Pl. Ex. 4a is reflected in the "Miscellaneous Adjustment" entry on Pl. Ex. 5a.

to account 122-2, will be the same as the entry on Pl. Ex. 4a under January, 1972 for "Ground Service", etc.

26. Before going into detail with respect to Exhibits 46 through 106, a few general comments are required. First, on each of the invoices or statements (or attached to a number of invoices or statements) included in Exhibits 46 through 106 is the following stamp on which certain information has been entered:



This stamp was used and placed on the invoices by ICC in the regular course of its business and it was the regular course of ICC's business to use this stamp and place it on invoices or statements in accordance with the following procedure employed by ICC during 1972 and 1973 with respect to the processing and payment of invoices. When an invoice or statement was received it would be sent to the appropriate officer or employee for approval. If a statement was involved, the invoices covered by the statement would be attached. After the invoice or statement was approved, the above stamp would be affixed and an entry reflecting the invoice or statement would be made in ICC's voucher register. In the box "Voucher No.", a voucher number would be entered. The first number of said voucher number indicated the month the entry was made and the remainder of the number indicated the particular

entry in the voucher register for that month. Thus, the voucher number 1-239 (see Pl. Ex. 46) would indicate the 239th entry in the voucher register for January. The dollar amount of the invoice would also be entered in the box "Account Amount" and the internal ICC account to which this amount was to be charged or credited would be entered in the box "Account No." When the statement or invoice was paid, the person approving the voucher distribution would initial the box "Approved", and the date of payment and check number would be entered in the box "Date Paid" and "Check No.", respectively. From January, 1972 through October, 1972 account number 122-2 was the account designated by ICC for all expenses paid in connection with the maintenance and operation of the Boeing 707. In approximately November of 1972 and continuing through 1973, this designation was changed to account No. 125-7. Thus, by reason of the above procedure employed by ICC in the regular course of its business, the appearance on a particular invoice or statement of the above stamp, with the appropriate information as to payment filled in, would indicate that the statement or invoice was paid by ICC in the regular course of business.

27. Pl. Ex. 107 through 111 consists of summary sheets reflecting amounts paid by ICC in connection with the maintenance and operation of the Boeing 707 as follows:

(i) Pl. Ex. 107 - summary of billings* for January, February and March, 1972.

(ii) Pl. Ex. 108 - summary of billings for April, May and June, 1972.

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*The term "billings" is used in that ICC was to be reimbursed for the Boeing 707 expenses by third parties.

(iii) Pl. Ex. 109 - summary of billings for July, August and September, 1972.

(iv) Pl. Ex. 110 - billings for October, November and December, 1972. Also includes two additional "analysis" for December, 1972 and a "summary" for December, 1972 which contains total amounts for December as reflected on original quarterly summary plus the two additional analysis.

(v) Pl. Ex. 111 - billings for 1973.

Exhibits 107 through 111 were prepared either by myself or by someone under my supervision at the end of each period to which they relate. They were prepared in the normal course of ICC's business and it was the regular course of ICC's business to prepare them. The amounts reflected on these exhibits, which were prepared on the basis of information contained in the books and records kept by ICC, can be correlated to the amounts reflected on Pl. Ex. 4a.

28. Exhibits 46 through 106 contain statements or invoices relating to the following items listed on Pl. Ex. 4a.

Pl. Ex.	Item on Pl. Ex. 4a
46	Invoices and Statements, re: January Gas and Oil
47	Invoices and Statements, re: January Ground Service
48	Invoices and Statements, re: January Landing Fee

Pl. Ex.	Item on Pl. Ex. 4a
49	Invoices and Statements, re: January Repairs and Maintenance
50	Invoices and Statements, re: Miscellaneo January Charges
51	Invoices and Statements, re: February Gas and Oil
52	Invoices and Statements, re: February Ground Service
53	Invoices and Statements, re: February Landing Fee
54	Invoices and Statements, re: February Repairs and Maintenance
55	Invoices and Statements, re: Miscellanec February Charges
56	Invoices and Statements, re: March Gas and Oil
57	Invoices and Statements, re: March Ground Service
58	Invoices and Statements, re: March Landing Fee
59	Invoices and Statements, re: March Repairs and Maintenance
60	Invoices and Statements, re: Miscellane March Charges
61	Invoices and Statements, re: April Gas and Oil
62	Invoices and Statements, re: April Ground Service
63	Invoices and Statements, re: April Landing Fee

Pl. Ex.	Item on Pl. Ex. 4a
64	Invoices and Statements, re: April Repairs and Maintenance
65	Invoices and Statements, re: Miscellaneous April Charges
66	Invoices and Statements, re: May Gas and Oil
67	Invoices and Statements, re: May Ground Service
68	Invoices and Statements, re: May Landing Fee
69	Invoices and Statements, re: May Repairs and Maintenance
70	Invoices and Statements, re: Miscellaneous May Charges
71	Invoices and Statements, re: June Gas and Oil
71a	Invoices and Statements, re: July, August and September Gas and Oil accrued to June
72	Invoices and Statements, re: June Ground Service
72a	Invoices and Statements, re: July, August and September Ground Service accrued to June
73a	Invoices and Statements, re: July, August and September Repairs and Maintenance accrued to June
74	Invoices and Statements, re: Miscellaneous June Charges
74a	Invoices and Statements, re: Miscellaneous July, August and September Charges accrued to June

Pl. Ex.	Item on Pl. Ex. 4a
77	Invoices and Statements, re: Miscellaneous July Charges
79	Invoices and Statements, re: August Ground Service
80	Invoices and Statements, re: August Landing Fee
81	Invoices and Statements, re: August Repairs and Maintenance
82	Invoices and Statements, re: Miscellaneous August Charges
83	Invoices and Statements, re: September Gas and Oil
84	Invoices and Statements, re: September Ground Service
85	Invoices and Statements, re: September Landing Fee
86	Invoices and Statements, re: September Repairs and Maintenance
87	Invoices and Statements, re: Miscellaneous September Charges
88	Invoices and Statements, re: October Gas and Oil
89	Invoices and Statements, re: October Ground Service
90	Invoices and Statements, re: October Landing Fee
91	Invoices and Statements, re: October Repairs and Maintenance
92	Invoices and Statements, re: Miscel. ..ous October Charges

Pl. Ex.	
93	Invoices and Statements, re: November Gas and Oil
94	Invoices and Statements, re: November Ground Service
95	Invoices and Statements, re: November Landing Fee
96	Invoices and Statements, re: November Repairs and Maintenance
97	Invoices and Statements, re: Miscellaneous November Charges
98	Invoices and Statements, re: December Gas and Oil
99	Invoices and Statements, re: December Ground Service
100	Invoices and Statements, re: December Landing Fee
101	Invoices and Statements, re: December Repairs and Maintenance
102	Invoices and Statements, re: Miscellaneou December Charges
103	Invoices and Statements, re: 1973 Gas and Oil
104	Invoices and Statements, re: 1973 Ground Service
105	Invoices and Statements, re: 1973 Repairs and Maintenance
106	Invoices and Statements, re: Miscellaneou 1973 Charges

29. Exhibits 71a, 72a, 73a and 74a contain invoices and statements which actually relate to the months of July, August

and September of 1972 but were applied to $140,000 accrued at June 30, 1972. These items are indicated on Pl. Ex. 109 by the notation "(A)". 169

30. The total amount of the invoices or statements contained in each of the above referred to exhibits and which are included as having been paid and charged to either account 122-2 or 125-7 is equal to the amount reflected on Pl. Ex. 4a for that particular item except as follows:

(i) Pl. Ex. 50 (January Miscellaneous): The schedule reflecting the payment by ICC of FICA in the amount of $183.44 is missing. However, the books and records of ICC indicate that this amount was paid by ICC in respect of the members of the Boeing 707 crew.

(ii) Pl. Ex. 51 (February, 1972 Gas and Oil): This exhibit contains a statement (PAN AMERICAN AIRWAY Statement for January 31, 1972) which includes and amount of $841.50 attributable to Ground Service for February. Therefore, the total amount shown on the documents included in Pl. Ex. 51 is $48,526.05. After deducting the $841.50 referred to above, this amount is $47,684.55, the same amount shown on Pl. Ex. 4a for "February Gas and Oil".

(iii) Pl. Ex. 52 (February, 1972 Ground

Service): The total amount shown in the documents included in Pl. Ex. 52 as having been paid in connection with the Boeing 707 is $4,757.51. After adding the $841.50 item referred to in "(ii)" above, this amount is $5,599.01, the amount shown on Pl. Ex. 4a for "February Ground Service".

(iv) Pl. Ex. 57 (March Ground Service): The total amount shown in the documents included in Pl. Ex. 57 as having been paid in connection with the Boeing 707 is $5,187.81. This exhibit contains an invoice from BUTLER AVIATION in the amount of $1,093.06, which is attributable to the March Repairs and Maintenance. Deducting the $1,093.06 from $5,187.81, leaves a total of $4,094.75, the amount shown on Pl. Ex. 4a for "March Ground Service".

(v) Pl. Ex. 59 (March, 1972 Repairs and Maintenance): The total amount shown in the documents included in Pl. Ex. 59 as having been paid in connection with the Boeing 707 is $16,217.24. Reference is made to the $1,093.06 BUTLER AVIATION invoice referred to in "(iv)" above, as having been attributable to March Repairs and Maintenance. In addition, ICC's books and records show that ICC received

a credit of $350.64 in respect of March Repairs and Maintenance. After adding the $1,093.06 to and subtracting the $350.64 from the total of the documents in Pl. Ex. 59, the result is $16,960.20, the amount shown on Pl. Ex. 4a for "March Repairs and Maintenance".

(vi) Pl. Ex. 67 (May, 1972 Ground Service): The total amount shown in the documents included in Pl. Ex. 67 as having been paid in connection with the Boeing 707 is $7,063.56. These documents, however, includes a $98 landing fee (on PAGE AIRWAYS INTERNATIONAL, INC.'s Statement in the amount of $564.75), which is attributable to May Landing Fees and when this $98 item is deducted, the total is $6,965.56, the amount shown on Pl. Ex. 4a for "May Ground Service".

(vii) Pl. Ex. 68 (May, 1972 Landing Fees): The total amount shown in the documents included in Pl. Ex. 68 as having been paid in connection with the Boeing 707 is $2,970.63. When the $98 item referred to in item "(vi)" above is added, the total is $3,068.63, the amount shown on Pl. Ex. 4a for "May, 1972 Landing Fees).

(viii) Pl. Ex. 71 (June Gas and Oil): The total amount shown in the documents included in Pl. Ex. 71 as having been paid in connection

with the Boeing 707 is $2,692, less than the figure shown on Pl. Ex. 4a for "June Gas and Oil". A credit for this amount is shown on Pl. Ex. under "July Gas and Oil".

(ix) Pl. Ex. 71a (July, August and September Gas and Oil Accrued in June): The total amount show in the documents included in Pl. Ex. 71a as having been paid in connection with the Boeing 707 is $74,874.42. This amount represents the entries made on Pl. Ex. 4a for "Accrued June Gas and Oil" and "August Gas and Oil".

(x) Pl. Ex. 72a (July, August and September Ground Service Accrued in June): The total amount shown in the documents included in Pl. Ex. 72a as having been paid in connection with the Boeing 707 is $1,063.91 or $951.57, less than the amount shown as the "June Accrued Ground Service Charges" on Pl. Ex. 4a. Pl. Ex. 79 contains an invoice from BUTLER AVIATION (Invoice #14105 in the amount of $1,317.51), which includes a Ground Service charge of $951.57.

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*The June Miscellaneous entry on Pl. Ex. 4 erroneously included the $1,052.16 item explained by note (C) on Pl. Ex. 4 and 4a. The correction of this item on Pl. Ex. 4a is also reflected in the "Miscellaneous Adjustment" entry on Pl. Ex. 5a.

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The total amount shown in the documents included in Pl. Ex. 79 as having been paid in connection with the Boeing 707 is $9,719.77 or $1,167.13 higher than the "August Ground Service" entry shown on Pl. Ex. 4a. As indicated above, the documents in this exhibit include BUTLER's Invoice #14105, containing charges of $39.38 and $124.43, which are attributable, respectively, to "Accrued June Repairs and Maintenance" (Pl. Ex. 73a) and "August Repairs and Maintenance" (Pl. Ex. 81) and also a

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(xx) Pl. Ex. 101 (December Repairs and Maintenance Charges): The total amount shown in the documents included in Pl. Ex. 101 as having been paid in connection with the Boeing 707 is $21,627.90. This is $4,055.84 lower than the "December Repairs and Maintenance" entry shown on Pl. Ex. 4a. This discrepancy is due to the fact that a PAN AMERICAN AIRWAYS invoice in the amount of $4,055.84 is missing from ICC's files, although the books and records of ICC indicate that this invoice was in fact received and paid by ICC in the normal course of its business.

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(xxiii) Pl. Ex. 104 (1973 Ground Service): The total amount shown in the documents included in Pl. Ex. 104 as having been paid in connection with the Boeing 707 is $935.72. This is $413.36 higher than the "1973 Ground Service" entry shown on Pl. Ex. 4a. This difference is explained by three reversing entries shown on ICC's books and records (see Pl. Ex. 111) with respect to AIR RIANTA ($.72), TROPICAL

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31. In conclusion, ICC, during 1972 and 1973 paid a total of $1,844,604.93 in connection with the operation and maintenance of the Boeing 707 for which it was not reimbursed. In addition, ICC was never reimbursed for the $343,750 advanced to SKYWAYS in connection with the purchase of the Boeing 707. I am advised by counsel that the complaint herein alleges that Mr. VESCO is liable to ICC for these payments and I, therefore, respectfully request the Court to enter judgment against Mr. VESCO in the amount of $2,188,354.93, preserving for ICC the right to prove additional damages.

ROBERT S. OST

Sworn to before me this
12th day of June, 1974

Notary Public

ELSIE C. SCLIO
Notary Public, State of New York
No. 31-[illegible]
Qualified in New York County
Commission Expires March [illegible]

STATES DISTRICT COURT
RN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - -X Index No. 73 Civ. 2513
: (CES)
ATIONAL CONTROLS CORP.,
:
Plaintiff,
: AMENDED JUDGMENT
-against-
:
L. VESCO, et al.,
:
Defendants.
:
- - - - - - - - - - - - - - - - - - -X

S DISTRICT CT
FILED
5/27/76
SD OF N.Y.

A judgment having been entered herein against L. Vesco on October 5, 1973;

BEST COPY AVAILABLE

AND, this cause having been brought on for partial t before the Court on May 14 and 22, 1974 and July 12, after the required notice was given to defendant Robert L. and plaintiff having offered proof establishing damages amount of $2,188,354.93 with respect to the claims set in Count Two of the Complaint;

AND, it appearing, and the undersigned having expressly ined, that there is no just reason for delay in entering a judgment against defendant Robert L. Vesco with respect to aims set forth in the Second Count of the Complaint and so f the Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth eventh Counts as relate to claims arising out of (a) the nd in kind of the outstanding shares of Fairfield General ation declared by International Controls Corp. in late (b) the purchase by Skyways Leasing Corporation of a 707 airplane in June of 1971 with funds contributed to s Leasing Corporation by International Controls Corp.; e lease between International Controls Corp. and Skyways g Corporation relating to the Boeing 707 airplane and all

damage, cost and expense to be determined by the Court upon an additional hearing or hearings to be held as provided for in said October 5, 1973 judgment; and it is further

ORDERED, that this judgment be and the same hereby is entered nunc pro tunc as of July 12, 1974.

S/CHARLES E STEWART JR
U.S.D.J.

5/24/76

Judgment Entered 5/27/76.

RAYMOND F Burghardt
Clerk

1976

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By _____
Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., Plaintiff, -vs- ROBERT L. VESCO, et al, Defendants.	Civil Action No. 73-2518 NOTICE OF MOTION OF DEFENDANT, VESCO & CO., INC., FOR EXTENSION OF TIME FOR FILING APPEAL

S I R S:

PLEASE TAKE NOTICE that defendant, Vesco & Co., Inc., will move before this Court on Thursday, September 9, 1976, at 10:00 A.M., or as soon thereafter as counsel may be heard, for an Order, pursuant to F.R.A.P.4(a), enlarging the period within which it could file its Notice of Appeal, from June 29, 1976 to July 7, 1976, on the grounds that defendant's failure to file such Notice of Appeal within the prescribed time was the result of excusable neglect.

PLEASE TAKE FURTHER NOTICE that defendant, Vesco & Co., Inc., will rely upon the affidavit of Susan I. Littman attached hereto and the memorandum of law submitted herewith.

HANNOCH, WEISMAN, STERN & BESSER
Attorneys for Defendant,
Vesco & Co., Inc.

By _____
ALBERT G. BESSER
A Member of the Firm

DATED: August 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., Plaintiff, -vs- ROBERT L. VESCO, et al, Defendants.	Civil Action No. 73-2518 AFFIDAVIT OF SUSAN I. LITTMAN IN SUPPORT OF MOTION OF DEFENDANT, VESCO & CO., INC., FOR EXTENSION OF TIME FOR FILING NOTICE OF APPEAL

STATE OF NEW JERSEY)
.SS:
COUNTY OF ESSEX)

SUSAN I. LITTMAN, of full age, being duly sworn, according to law, upon her oath, deposes and says:

1. I am an attorney associated with the firm of Hannoch, Weisman, Stern & Besser, Esqs., counsel for defendant, Vesco & Co., Inc., in the within action, and was personally charged with responsibility for the filing of a notice of appeal of the within matter from this Court to the Second Circuit.

2. On May 26, 1976, on the return date of ICC's Order to Show Cause why a new final judgment should not be entered nunc pro tunc as of July 12, 1974, I appeared in court in opposition thereto.

3. Although I saw the Court sign a new judgment on that day, defendant was never served with notice of entry of such judgment. It is my understanding that often the party prevailing upon a motion or a judgment will withhold docketing such signed papers to "buy time" before the inevitable next step, and I did not think it unusual, therefore, that the judgment apparently had not been filed.

4. Defendant, Vesco & Co., Inc., was, moreover, in something of a quandry following the Court's action, as to the proper course to follow in order to bring for appeal before the

Second Circuit the nunc pro tunc issue, as well as all those issues before the Second Circuit in our earlier appeal (75-7548) (with which that Court did not deal in its opinion dated May 13, 1976), which triggered the Order to Show Cause and the May 26, 1976 proceeding in this Court.

5. To clarify the situation, we wrote a letter on June 17, 1976, to A. Daniel Fusaro, Esq., Clerk of the Court of Appeals for the Second Circuit, requesting that the record be completed or amended to include this Court's recent amended judgment (attached hereto as Exhibit "A"). In this matter, our confusion was apparently shared by plaintiff, whose counsel had posed similar questions to the Clerk in its letter of June 14, 1976 (attached hereto as Exhibit "B").

6. On Thursday, June 24, 1976, we received a letter from Mr. Fusaro (attached hereto as Exhibit "C"), informing us for the first time that the May 26, 1976 judgment had been entered on May 27, 1976. On July 7, 1976, we filed our Notice of Appeal from this May 27, 1976 judgment.

7. We did not perceive our Notice of Appeal as untimely, but rather as a precautionary measure, to make doubly sure that the propriety or validity of making the earlier judgment "nunc pro tunc" as of July 12, 1974, was before the Second Circuit. It seemed clear to us, as it does today, that plaintiff shared our confusion, was awaiting completion of the record, and viewed this interim period as one in which time for the filing of an appeal was tolled.

8. Even after receipt of Exhibit "C" by this office, we contemplated the filing, first, of a motion before the Second Circuit, for reconsideration of our prior appeal.

a credit of $350.64 in respect of March Repairs and Maintenance. After adding the $1,093.06 to and subtracting the $350.64 from the total of the documents in Pl. Ex. 59, the result is $16,960.20, the amount shown on Pl. Ex. 4a for "March Repairs and Maintenance".

(vi) Pl. Ex. 67 (May, 1972 Ground Service): The total amount shown in the documents included in Pl. Ex. 67 as having been paid in connection with the Boeing 707 is $7,063.56. These documents, however, includes a $98 landing fee (on PAGE AIRWAYS INTERNATIONAL, INC.'s Statement in the amount of $564.75), which is attributable to May Landing Fees and when this $98 item is deducted, the total is $6,965.56, the amount shown on Pl. Ex. 4a for "May Ground Service".

(vii) Pl. Ex. 68 (May, 1972 Landing Fees): The total amount shown in the documents included in Pl. Ex. 68 as having been paid in connection with the Boeing 707 is $2,970.63. When the $98 item referred to in item "(vi)" above is added, the total is $3,068.63, the amount shown on Pl. Ex. 4a for "May, 1972 Landing Fees).

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with the Boeing 707 is $2,692, less than the figure shown on Pl. Ex. 4a for "June Gas and Oil". A credit for this amount is shown on Pl. Ex. under "July Gas and Oil".

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ROBERT S. OST

Sworn to before me this
12th day of June, 1974

Notary Public

ELSIE C. SCUO
Notary Public, State of New York
No. 31-0[illegible]
Qualified in New York County
Commission Expires March [illegible]

STATES DISTRICT COURT
RN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - -X
ATIONAL CONTROLS CORP.,

Plaintiff,

-against-

L. VESCO, et al.,

Defendants.

- - - - - - - - - - - - - - - - - - -X

Index No. 73 Civ. 2513
(CES)

AMENDED JUDGMENT

S DISTRICT CT
FILED
5/27/76
SD OF N.Y.

A judgment having been entered herein against L. Vesco on October 5, 1973;

BEST COPY AVAILABLE

AND, this cause having been brought on for partial t before the Court on May 14 and 22, 1974 and July 12, after the required notice was given to defendant Robert L. and plaintiff having offered proof establishing damages amount of $2,188,354.93 with respect to the claims set in Count Two of the Complaint;

AND, it appearing, and the undersigned having expressly ined, that there is no just reason for delay in entering a judgment against defendant Robert L. Vesco with respect to aims set forth in the Second Count of the Complaint and so f the Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth eventh Counts as relate to c aims arising out of (a) the d in kind of the outstanding shares of Fairfield General ction declared by International Controls Corp. in late (b) the purchase by Skyways Leasing Corporation of a 707 airplane in June of 1971 with funds contributed to s Leasing Corporation by International Controls Corp.; e lease between International Controls Corp. and Skyways g Corporation relating to the Boeing 707 airplane and all

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ORDERED, that this judgment be and the same hereby is entered nunc pro tunc as of July 12, 1974.

S/Charles E Stewart Jr
U.S.D.J.

5/24/76

Judgment Entered 5/27/76.

Raymond F Burghardt
Clerk

1976

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By
Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., Plaintiff, -vs- ROBERT L. VESCO, et al, Defendants.	Civil Action No. 73-2518 NOTICE OF MOTION OF DEFENDANT, VESCO & CO., INC., FOR EXTENSION OF TIME FOR FILING APPEAL

S I R S:

PLEASE TAKE NOTICE that defendant, Vesco & Co., Inc., will move before this Court on Thursday, September 9, 1976, at 10:00 A.M., or as soon thereafter as counsel may be heard, for an Order, pursuant to F.R.A.P.4(a), enlarging the period within which it could file its Notice of Appeal, from June 29, 1976 to July 7, 1976, on the grounds that defendant's failure to file such Notice of Appeal within the prescribed time was the result of excusable neglect.

PLEASE TAKE FURTHER NOTICE that defendant, Vesco & Co., Inc., will rely upon the affidavit of Susan I. Littman attached hereto and the memorandum of law submitted herewith.

HANNOCH, WEISMAN, STERN & BESSER
Attorneys for Defendant,
Vesco & Co., Inc.

By _____
ALBERT G. BESSER
A Member of the Firm

DATED: August 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., Plaintiff, -vs- ROBERT L. VESCO, et al, Defendants.	Civil Action No. 73-2518 AFFIDAVIT OF SUSAN I. LITTMAN IN SUPPORT OF MOTION OF DEFENDANT, VESCO & CO., INC., FOR EXTENSION OF TIME FOR FILING NOTICE OF APPEAL

STATE OF NEW JERSEY)
.SS:
COUNTY OF ESSEX)

SUSAN I. LITTMAN, of full age, being duly sworn, according to law, upon her oath, deposes and says:

1. I am an attorney associated with the firm of Hannoch, Weisman, Stern & Besser, Esqs., counsel for defendant, Vesco & Co., Inc., in the within action, and was personally charged with responsibility for the filing of a notice of appeal of the within matter from this Court to the Second Circuit.

2. On May 26, 1976, on the return date of ICC's Order to Show Cause why a new final judgment should not be entered nunc pro tunc as of July 12, 1974, I appeared in court in opposition thereto.

3. Although I saw the Court sign a new judgment on that day, defendant was never served with notice of entry of such judgment. It is my understanding that often the party prevailing upon a motion or a judgment will withhold docketing such signed papers to "buy time" before the inevitable next step, and I did not think it unusual, therefore, that the judgment apparently had not been filed.

4. Defendant, Vesco & Co., Inc., was, moreover, in something of a quandry following the Court's action, as to the proper course to follow in order to bring for appeal before the

Second Circuit the nunc pro tunc issue, as well as all those issues before the Second Circuit in our earlier appeal (75-7548) (with which that Court did not deal in its opinion dated May 13, 1976), which triggered the Order to Show Cause and the May 26, 1976 proceeding in this Court.

5. To clarify the situation, we wrote a letter on June 17, 1976, to A. Daniel Fusaro, Esq., Clerk of the Court of Appeals for the Second Circuit, requesting that the record be completed or amended to include this Court's recent amended judgment (attached hereto as Exhibit "A"). In this matter, our confusion was apparently shared by plaintiff, whose counsel had posed similar questions to the Clerk in its letter of June 14, 1976 (attached hereto as Exhibit "B").

6. On Thursday, June 24, 1976, we received a letter from Mr. Fusaro (attached hereto as Exhibit "C"), informing us for the first time that the May 26, 1976 judgment had been entered on May 27, 1976. On July 7, 1976, we filed our Notice of Appeal from this May 27, 1976 judgment.

7. We did not perceive our Notice of Appeal as untimely, but rather as a precautionary measure, to make doubly sure that the propriety or validity of making the earlier judgment "nunc pro tunc" as of July 12, 1974, was before the Second Circuit. It seemed clear to us, as it does today, that plaintiff shared our confusion,was awaiting completion of the record, and viewed this interim period as one in which time for the filing of an appeal was tolled.

8. Even after receipt of Exhibit "C" by this office, we contemplated the filing, first, of a motion before the Second Circuit, for reconsideration of our prior appe[illegible].

9. We were, therefore, greatly surpised when we were served with plaintiff's Motion to Dismiss our appeal.

10. The confusion of all parties seems to be further evidenced by the fact that it took plaintiff almost a month (from July 7th when our Notice of Appeal was filed, until August 4th) to file its Motion to Dismiss in the Second Circuit (attached hereto as Exhibit "D").

11. The affidavit of Milton Gould, Esq. supporting plaintiff's Motion to Dismiss, does not allege that plaintiff has been prejudiced in any way, by the filing of Vesco & Co., Inc.'s Notice of Appeal nine days late. It cannot, and does not, even aver that it did not have notice of our intention to file an appeal, since it received a copy of Exhibit "A", our letter to the Clerk of the Second Circuit on June 17th, in which we flagged this intention quite clearly, well within the time allowed for filing a notice of appeal.

12. Further, we have already begun preparation of our brief on appeal to the Second Circuit, and plan to file it within the time so allowed by that Court. Although the plaintiff could not be prejudiced by this Court's refusal to grant our motion, defendant, Vesco & Co., Inc., surely would be.

13. In the belief that the foregoing represents "excusable neglect" upon the part of counsel for defendant, Vesco & Co., Inc., I respectfully ask that this Court grant defendant's Motion to file our Notice of Appeal nine (9) days out of time. Additionally, in order to avoid possible further delay, attendant upon further proceedings in the Second Circuit, where the Motion to Dismiss the appeal is scheduled for argument on September 14, 1976, we are moving, simultaneously by this Motion as permitted by F.R.A.P.4(a),

for extension of the time within which we formally may file our Notice of Appeal, to and including July 7, 1976, when the Notice of Appeal was filed.

Susan I. Littman

SUSAN I. LITTMAN

Sworn and Subscribed to
before me this 30th day
of August, 1976.

CHARLES R. CHURCH

June 17, 1976

1109-15

Daniel Fusaro, Esq., Clerk
ted States Court of Appeals
ond Circuit
ted States Court House
y Square
York, New York 10007

Re: International Controls Corp.
vs. Robert L. Vasco, et al
Docket No. 75-7548

Mr. Fusaro:

We are in receipt of a copy of a letter to you dated 14, 1976, from Shea, Gould, Climenko, Kramer & Casey, Esqs. onnection with the above matter. We, too, are confused as to appropriate procedure for bringing before the Court the still solved issues, and would appreciate guidance.

It is our position, however, that the record should be leted or amended to include Judge Stewart's recent entry of mended judgment. We respectfully submit that that action es issues that should be presented to the Court.

EXHIBIT A

May we respectfully suggest that the Court set a reasonable imetable for amendment and completion of the record and for the ubmission of supplemental memoranda of law with respect to Judge tewart's recent action.

Very truly yours,

JAMES J. SHRAGER

JS/aw
c: Shea, Gould, Climenko,
Kramer & Casey, Esqs.

SHEA GOULD CLIMENKO KRAMER & CASEY
330 MADISON AVENUE
NEW YORK, NEW YORK 10017
AREA CODE 212
661-3200
CABLE ADDRESS
HOLMANG

RECEIVED
HANNOCH, WEISMAN, STERN & BESSER
JUN 16 1976

MILES F. McDONALD
SAUL S. STREIT
CHRISTOPHER C. McGRATH
OF COUNSEL

June 14, 1976

A. Daniel Fusaro, Esq.
Clerk of the United States
Court of Appeals
Second Circuit
United States Court House
Foley Square
New York, New York 10007

Re: International Controls Corp.
vs. Robert L. Vesco, et al.
Docket No. 75-7548

Dear Mr. Fusaro:

We represent International Controls Corp., Plaintiff-Appellee in the above referenced matter.

On May 13, 1976, the Court rendered an opinion in connection with an appeal by defendant Vesco & Co., Inc. from Judge Stewart's August 22, 1975 decision. In that opinion, the Court remanded the case to the District Court for further proceedings, specifically, clarification with respect to the finality of a certain judgment entered on July 12, 1974 which formed part of the bases upon which the District Court issued the Order appealed from. In light of the decision to remand, the Court expressly stated that "it is unnecessary for us to reach the other arguments reached by [Vesco & Co.] on appeal."

Following the Court's May 13, 1976 decision, Plaintiff-Appellee applied to the District Court for the

EXHIBIT B

entry of an amended judgment. On May 26, 1976, Judge Stewart signed an amended judgment containing the required Rule 54(b) certification of finality. A copy is enclosed.

Please advise whether the Court of Appeals is now in a position to proceed to determine the issues on the appeal or whether any further action is required to complete the record.

We felt it appropriate to notify the Court of the above since the Appellant has to date taken no action in this regard.

Respectfully yours,

SHEA GOULD CLIMENKO KRAMER & CASEY

Milton S. Gould

cc: Hannoch, Weisman, Stein
& Besser, Esqs.

BY HAND

OFFICE OF
DANIEL FUSARO
CLERK
D STATES COURTHOUSE
FOLEY SQUARE
EW YORK 10007

COPY

June 23, 1976

Milton S. Gould, Esq.
Shea, Gould, Climenko, Kramer & Casey
330 Madison Avenue
New York, New York 10017

Re: International Controls Corp. v. Robert L. Vesco, et al.
Docket Number 75-7548

Dear Mr. Gould:

The appeal docketed as 75-7548 and decided on May 13, 1976 is no longer before this court. Should any further proceedings in the International Controls Corp. v. Vesco, et al. litigation come before the court, the parties may if so advised request the court to consider the matter on the briefs and appendix previously filed in that appeal, with whatever supplemental briefs they may desire to submit.

The court cannot, of course, give any advisory opinion on the effect of the district court's judgment entered May 27, 1976 ordered entered nunc pro tunc as of July 12, 1974.

Sincerely,

A. Daniel Fusaro
Clerk

cc: James J. Shrager, Esq.
Hannoch, Weisman, Stern & Besser
744 Broad Street
Newark, New Jersey 07102

EXHIBIT C

RECEIVED JUN 24 1976

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

INTERNATIONAL CONTROLS CORP., Plaintiff-Appellee, vs. ROBERT L. VESCO, et al., Defendants, vs. VESCO & CO., INC., Defendant-Appellant.	Index No. 73 Civ. 2518 Docket No. T-6256 NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE, that upon the Notice of Appeal dated July 7, 1976 of defendant-appellant Vesco & Co., Inc., filed in the United States District Court for the Southern District of New York on July 7, 1976, and upon the annexed affidavit of Milton S. Gould, sworn to August 3, 1976, the undersigned will move this Court, pursuant to Rule 4 of the Federal Rules of Appellate Procedure, on August 17, 1976, at the Federal Courthouse, Foley Square, New York, New York, for an order dismissing said appeal upon the ground that said Notice of Appeal was not timely filed and that no order has been entered extending the time for the filing of said Notice of Appeal.

Dated: New York, New York
August 4, 1976

Yours, etc.,

SHEA GOULD CLIMENKO & CASEY

By _____
A Member of the Firm
Attorneys for Plaintiff-Appellee
International Controls Corp.
330 Madison Avenue
New York, New York 10017
(212) 661-3200

EXHIBIT D

TO:

HANNOCH, WEISMAN, STERN & BESSER
744 Broad Street
Newark, New Jersey 07102

and

ARUM FRIEDMAN & KATZ
450 Park Avenue
New York, New York

Attorneys for Defendant-Appellant
Vesco & Co., Inc.

BEST COPY AVAILABLE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

INTERNATIONAL CONTROLS CORP., Plaintiff-Appellee, vs. ROBERT L. VESCO, et al., Defendants, vs. VESCO & CO., INC., Defendant-Appellant.	Index No. 73 Civ. 2518 Docket No. T-6256 AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MILTON S. GOULD, being duly sworn, deposes and says:

1. I am a member of the firm of Shea Gould Climenko & Casey, attorneys for International Controls Corp., plaintiff-appellee in the above referred to matter. I make this affidavit in support of the within motion for an order dismissing the appeal of defendant-appellant Vesco & Co., Inc., upon the ground that the Notice of Appeal, pursuant to which said appeal was taken, was not timely filed and that no order has been entered extending the time for the filing of said Notice of Appeal.

2. Vesco & Co., Inc. purports to take this appeal pursuant to a Notice of Appeal filed in the United States District Court for the Southern District of New York on July 7, 1976. Said Notice of Appeal, a copy of which is annexed hereto as

Exhibit A, recites that Vesco & Co., Inc. is appealing from the opinion and order of The Honorable Charles E. Stewart, Jr., filed on August 22, 1975, and from the amended judgment signed by Judge Stewart on May 26, 1976 and docketed on May 27, 1976.

3. A copy of pages 20 and 21 of the District Court's docket sheet in this matter, reflecting the filing of the Notice of Appeal on July 7, 1976, is annexed hereto as Exhibit B. On its face, it is apparent that the Notice of Appeal was not filed within 30 days, as required by Rule 4(a) of the Federal Rules of Appellate Procedure. Also, an examination of the docket sheet demonstrates that no order has been entered extending the time for the filing of the Notice of Appeal. Nor am I aware of any application by Vesco & Co., Inc. for an order so extending the time to file said Notice of Appeal.

4. By reason of the foregoing, it is respectfully submitted that Vesco & Co., Inc.'s Notice of Appeal was not timely filed and, therefore, its appeal should be dismissed.

MILTON S. GOULD

Sworn to before me this
3rd day of August, 1976.

Notary Public

[illegible]
Notary Public

(Copy of "J&C" in the U.S.D.C. S. Dist of NY on 7/7/76

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,	:	
Plaintiff,	:	
-vs-	:	Index No. 73 Civ. 2518 (CES)
ROBERT L. VESCO, et al.,	:	NOTICE OF APPEAL
Defendants.	:	
	:	

NOTICE is hereby given that defendant, Vesco & Co., Inc. hereby appeals to the United States Court of Appeals for the Second Circuit from the whole of the opinion and order of the Honorable Charles E. Stewart,Jr.,filed on the 22nd day of August, 1975 holding that Vesco & Co., Inc. is the alter ego of Robert L. Vesco and appointing a receiver to collect the assets of Vesco & Co., Inc., and directing that certain certificates of shares of ICC and Fairfield General Corporation be turned over to such receiver by defendant, Vesco & Co., Inc.;

AND additionally, defendant appeals from the Amended Judgment signed by the Honorable Charles E. Stewart on May 26, 197 and docketed on May 27, 1976, nunc pro tunc as of July 12, 1974.

Defendant, Vesco & Co., Inc., shall rely upon briefs and appendixes filed earlier in the appeal docketed 75-7548, as well as a supplemental brief upon the issues raised by the Amended Judgment.

HANNOCH, WEISMAN, STERN & BESSER
Attorneys for Defendant Vesco & Co., Inc.

By _____
JAMES J. SHRAGER
A Member of the Firm

DATED: July 7, 1976

EXHIBIT A

ARUM, FRIEDMAN & KATZ
Attorneys for Defendant Vesco & Co., Inc.

By _____
MICHAEL HEITNER

Serve:

CLERK
United States Court of Appeals
40 Foley Square
New York, New York

SHEA, GOULD, CLIMENKO, KRAMER & CASEY
Attorneys for Plaintiff
330 Madison Avenue
New York, New York

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-vs-

ROBERT L. VESCO, et al.,

Defendants.

NOTICE OF APPEAL

HANNOCH, WEISMAN, STERN & BESSER
744 Broad Street
Newark, New Jersey

ARUM, FRIEDMAN & KATZ
450 Park Avenue
New York, New York

Attorneys for Defendant
Vesco & Co., Inc.

COPY RECEIVED
SHEA GOULD CLIMENKO & CASEY
1976 JUL -9 PM 2:21
BY HAND
BY MAIL
BY

D. V3830 P0 A6

p 20

	PROCEEDINGS	Date Order or Judgment Entered
	Filed praecipe and order to show cause filed 4-30-76 fixing hearing counsel the motion is denied. Counsel will arrange for a time and place to take the discovery requested by plff. and the Court expects that the conferences of counsel and of the parties will be taken into account--Stewart, J.	
4-6	Filed stip. and order ext. deft. Marine Midland Bank time to answer to 5-26-76--Stewart, J.	
4-6	Filed stip. and order ext. deft. Marine Midland Bank time to answer to 6-25-76--Stewart, J.	
4-6	Filed stip. and order ext. deft. Frank G. Beatty time to answer to 6-30-76--Stewart, J.	
4-6	Filed stip. and order ext. deft. Wilbert J. Sefton time to answer to 6-30-76--Stewart, J.	
4-6	Filed deft. Bohemia Commonwealth Bank Ltd. affdvt. and notice of motion for an order pursuant to rule 60(b) to vacate default judgment ent. 4-12-76	
4-6	Filed memorandum of law of deft. in support of above motion to open the default judgment.	
4-6	Filed stip. and order withdrawing deft. Bohemia Commonwealth Bank, Ltd. motion to open default without prejudice to its renewal at a later date. --Stewart, J.	
4-6	Filed stip. and order ext. deft. Marine Midland Bank time to answer to 5-23-76--Stewart, J.	
4-6	Filed stip. and order ext. deft. Marine Midland Bank time to answer to 5-26-76--Stewart, J.	
4-6	Filed stip. and order ext. deft. Wilbert J. Sefton time to answer the amended complaint to 5-31-76--Stewart, J.	
4-6	Filed stip. and order ext. deft. Frank G. Beatty time to answer the amended complaint to 5-31-76--Stewart, J.	
4-26	Copy Affidavit of [illegible] Ltd. proceeding thereof 3-10-76	
4-26	Filed plff. affdvt. and ORDER to SHOW CAUSE why deft. Robert L. Young, Young Co., Inc. shall not be enjoined on 5-26-76 at 10:00 a.m. why an order & judgment should not be entered and that personal service shall be rendered on or before 5-2-76--Stewart, J.	
4-26	Filed amended judgment that plff. recover of deft. Robert L. Young the sum of $ 2,189.00 plus interest at 6% from 3-1-76 on total plff. shall have and hereby is given such additional loss, damage, cost and expense as it has suffered by reason of the acts and things alleged in the complaint other than those as to which judgment has been granted, the amount of any such additional loss, damage, cost and expense to be determined by the Court upon an additional hearing or hearings to be held as provided for in said 10-5-72 judgment; and that this judgment is entered nunc pro tunc as of 4-12-76--Stewart, J. Judgment entered on 5-27-76 (Wade) n/m (in re: to obtain of Fairfield Central Corp.)	
4-26	Filed affdvt. of service of Order to Show Cause, affdvt. and amended judgment served upon Heinrich Wolcott, Sloan & Parker on 4-21-76 by the Parker	
4-26	Filed transcript of record of proceedings dated 4-26-76	
4-26	Filed stip. and order ext. deft. Marine Midland Bank time to answer to 6-25-76--Stewart, J.	
4-26	Filed stip. and order ext. deft. Wilbert J. Sefton time to answer the amended complaint to 6-30-76--Stewart, J.	
4-26	Filed stip. and order ext. deft. Frank G. Beatty time to answer to 6-30-76	
4-26	Filed transcript of the Fed. R. App. P. 42(b) dismissing deft-appellant order of the [illegible] Court for further proceedings in accordance with the opinion of this Court.	
4-26	Filed stip. and order that the time of deft. Frank Beatty to answer, renders complaint ext. to July 31, 1976. So ordered, Stewart, J.	

(Rec'd 4-29-76)

EXHIBIT B

p 21

Docket Continuation

PROCEEDINGS	Jud
Filed stip. and order that the time of deft. Vilbert Snipes to answer amended complaint is ext. to July 31, 1976. So ordered. Stewart, J.	
Filed stip. and order that the time of deft. Marine Midland Bank to answer amended complaint is ext. to July 30, 1976. So ordered. Stewart, J.	
Filed deft. Vesco & Co., Inc. notice of appeal to the U.S.C.A. for the Second Circuit from the whole of the opinion and order of 5-22-76, and deft. appeals from the amended judgment of 5-26-76 mailed notice to Shea, Gould, Climenko & Kramer & Casey.	
Filed Transcript of record of proceedings dated 5-26-76	
Filed stip. and order ext. deft. Marine Midland Bank time to answer to 8-27-76 ——Gagliardi, J.	

Plaintiff-Appellee,

vs.

ROBERT L. VESCO, et al.,

Defendants,

vs.

VESCO & CO., INC.,

Defendant-Appellant.

NOTICE OF MOTION

SHEA GOULD CLIMENKO & CASEY
330 MADISON AVENUE
NEW YORK, N. Y. 10017
(212) 661-3200

ATTORNEYS FOR
Plaintiff-Appellee
International Controls Corp.

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-vs-

ROBERT L. VESCO, et al,

Defendants.

Civil Action No. 73-2518

NOTICE OF MOTION OF DEFENDANT, VESCO & CO., INC., FOR EXTENSION OF TIME FOR FILING APPEAL

HANNOCH, WEISMAN, STERN & BESSER
Attorneys for Defendant,
Vesco & Co., Inc.
744 Broad Street
Newark, New Jersey 07102

File Copy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,	:	
Plaintiff,	:	Civil Action No. 73-2518
-vs-	:	
ROBERT L. VESCO, et al.,	:	NOTICE OF MOTION UNDER F.R. CIV. P. 60(b) TO VACATE AND REENTER ORDER TO PERMIT TIMELY APPEAL
Defendants.	:	

S I R S:

PLEASE TAKE NOTICE that defendant, Vesco & Co., Inc., will move before this court before Honorable Charles E. Stewart, Jr. as soon as counsel may be heard, for an order under F.R. Civ. P. 60(b)(6) to vacate the order of this court dated May 26, 1976 and immediately reentering said order in its entirety.

PLEASE TAKE FURTHER NOTICE that defendant, Vesco & Co., Inc., will rely upon the affidavit of Susan I. Littman sworn to on August 30, 1976 attached to the undersigned's notice of motion dated August 31, 1976 and the memorandum of law submitted herewith.

HANNOCH, WEISMAN, STERN & BESSER
Attorneys for Defendant,
Vesco & Co., Inc.

By _____
ALBERT G. BESSER
A Member of the Firm

DATED: September 14, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP., :
Plaintiff, :
-vs- :
ROBERT L. VESCO, et al., :
Defendants. :

Civil Action No. 73-2518

PROOF OF SERVICE

It is hereby certified that a copy of the within notice of motion of defendant, Vesco & Co., Inc., under F.R. Civ. P. 60(b) to vacate and reenter order to permit timely appeal and memorandum of law were sent first class mail, postage prepaid, to the following on September 14, 1976:

SHEA, GOULD, CLIMENKO & KRAMER, ESQS.
Attorneys for Plaintiff
330 Madison Avenue
New York, New York 10017

GORDON, HURWITZ, BUTOWSKY & BAKER, ESQS.
Special Counsel for Plaintiff
230 Park Avenue
New York, New York 10017

ARUM, FRIEDMAN & KATZ, ESQS.
450 Park Avenue
New York, New York 10022

HANNOCH, WEISMAN, STERN & BESSER
Attorneys for Defendant,
Vesco & Co., Inc.

By _____
ALBERT G. BESSER
A Member of the Firm

DATED: September 14, 1976

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-vs-

ROBERT L. VESCO, et al.,

Defendants.

Civil Action No. 73-2518

NOTICE OF MOTION
UNDER F.R. CIV. P. 60(b) TO
VACATE AND REENTER ORDER TO
PERMIT TIMELY APPEAL

HANNOCH, WEISMAN, STERN & BESSER
Attorneys for Defendant,
Vesco & Co., Inc.
744 Broad Street
Newark, New Jersey 07102

File Copy

NOV 01 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - x

INTERNATIONAL CONTROLS CORP., :

Plaintiff, :

-against- : 73 Civ. 2518

ROBERT L. VESCO, et al., :

Defendants. :

- - - - - - - - - - - - - - - - - x

M E M O R A N D U M

STEWART, DISTRICT JUDGE:

On May 27, 1976, an amended judgment was entered in this action in response to a May 13 remand from the Court of Appeals due to the absence of a Rule 54(b) of the Federal Rules of Civil Procedure ("F.R.Civ.P.") certification of finality in our July 16, 1974 judgment. Defendant Vesco & Co., Inc. ("Vesco & Co.") filed its notice of appeal from this amended judgment on July 7, 1976, nine days late. On August 4, 1976, plaintiff moved in the Court of Appeals to dismiss the appeal as untimely. Defendant then moved before this court on August 31, 1976 pursuant to Rule 4(a) of the Federal Rules of Appellate Procedure ("F.R.App.P."), for an extension of the time in which to file a notice of appeal on the ground of excusable neglect. On September 14, the Court of Appeals heard plaintiff's motion to dismiss and a cross-motion by defendant that the May 13 remand be reconsidered. The motion

to dismiss was granted and the motion to reconsider denied. On September 15, the defendant moved this court to vacate the May 27, 1976 judgment pursuant to Rule 60(b) of the F.R.Civ.P. A hearing was held on both of the motions pending before this court on September 22, 1976, and a further conference was held on October 7 after which the parties submitted additional papers.

Plaintiff, in opposition, initially argues that defendant's motion to extend the time in which to file a notice of appeal should be dismissed because the motion was not made within 60 days after entry of the judgment appealed from, as required by Rule 4(a). The Second Circuit, confronted with this very argument, recently held that

> "the filing of the notice of appeal within 60 days, coupled with a prima facie showing of excusable neglect, and the timely service of the notice of appeal on the opposing parties, constituted a sufficient manifestation on the part of appellants to permit the district court, in the exercise of its discretion, to treat the notice of appeal as the substantial equivalent of a motion to extend the time because of excusable neglect." Stirling v. Chemical Bank, 511 F.2d 1030 (2d Cir. 1975).

In the instant case, defendant filed, and served plaintiff with, its notice of appeal within 60 days of the judgment, and made a prima facie showing of excusable neglect. Thus we will exercise our discretion "to treat the notice of appeal as the substantial equivalent of a motion," and consider the substance of the motion.

First, defendant claims that it did not know that the judgment was entered on May 27, 1976. Defendant admits that its attorney saw the order signed on May 26 (Littman Affidavit ¶3). Defendant apparently thought that the prevailing party entered a judgment, and that this party might delay entry so as to put off "the inevitable" appeal (Littman ¶3). Defendant was entirely mistaken about the procedure in the federal courts where a signed order is sent directly from chambers to the clerk's office where it is entered in the docket shortly thereafter. See Rules 58(2) and 79(a) of the F.R.Civ.P. Ignorance of the court's procedures is not "excusable neglect." Russo v. Flota Mercante Grancolombiana, 303 F. Supp. 1404 (S.D.N.Y. 1969); Nichols-Morris Corp. v. Morris, 279 F.2d 81 (2d Cir. 1960).

Second, defendant claims that it was not notified by the clerk's office of the entry of judgment as required by F.R.Civ.P. 77(d). This is contradicted by the notation "n/n" in the docket following the entry of the judgment on May 27, 1976. This notation is used by the clerk's office to indicate that notice has been mailed to the parties (Camhy Affidavit ¶4). Even if notice were not mailed by the clerk, Rule 77(d) specifically provides that "[l]ack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4(a) of the Federal Rules of Appellate Procedure," where the sole ground for relief is "excusable neglect." In this case, but

for defendant's apparent ignorance of the federal procedures for entry of judgment, it would have known that entry would immediately follow signing of the order, and a routine check with the docket clerk would have informed it that this procedure had been followed. We also note that notice of the order appeared in the June 8, 1976 issue of the New York Law Journal. Thus, even if defendant did not receive notice from the clerk's office, it should have known independently that the order was entered, so any failure on the part of the clerk's office is not "excusable neglect." See Nichols-Morris, supra at 83.

Finally, on June 24, 1976, five days before the 30-day time to appeal had expired, defendant was informed by the Court of Appeals Clerk, Daniel Fusaro, that the amended judgment had been entered on May 27, 1976 and that the previous appeal had been disposed of by the Court of Appeals by its May 13, 1976 remand. Defendant did not file notice within this five-day period although it indicated that it intended at all times to pursue the appeal (Littman ¶11). Its only explanation for not filing is that it was "in a quandry...as to the proper avenue for further proceedings" (Defendant's August 30 Memorandum p. 5). However confusing the procedural posture of the case may have been earlier, we think that the Fusaro letter made it clear that defendant would have to institute a new appeal in order to have the Court of Appeals consider the other issues that defendant had raised, but which the Court of Appeals had not reached because of its decision to remand. Thus, we must conclude that defendant's failure to act was the result of one

of those careless omissions to which everyone is indeed subject, but which do not excuse inaction." Nichols-Morris, supra at 83.

Accordingly, we deny defendant's motion to extend the time in which to file a notice of appeal.

In the alternative, defendant has moved on several grounds that the judgment be vacated pursuant to F.R.Civ.P. 60(b). Admittedly, defendant's primary interest in this relief is that it would give defendant a chance to pursue a timely appeal upon entry of a corrected judgment.

Defendant's main argument here rests on its contention that the May 27, 1976 judgment is void because it refers only to the original complaint, and not to the amended complaint which had been filed before the default against Robert L. Vesco ("Vesco") was entered.

A brief chronology of the key events relating to this claim is as follows. The original complaint was filed on June 7, 1973 and Vesco was served with summons and complaint on July 30, 1973. An amended complaint was filed on September 7, 1973 and service was purportedly made on Vesco on October 24 and 25, 1973. In the meantime, on October 5, 1973, a default judgment was entered against Vesco on the original complaint. Pursuant to this default judgment, an inquest on damages was held which resulted in our July 16, 1974 judgment, awarding plaintiff $2,188,345.93. On April 4, 1975 an amended judgment was entered certifying the finality of the October 5, 1973 and July 16, 1974 judgments. The April 4 amended

judgment was itself amended on September 15, 1975 in order to correct an error as to the date of the July 16, 1974 judgment. Plaintiff sought to satisfy some of its outstanding default judgments against Vesco through certain assets of Vesco & Co., and on August 22, 1975 this court held that Vesco & Co. was the alter ego of Vesco. Vesco & Co. filed its notice of appeal on September 19, 1975 and on May 13, 1976, the Court of Appeals remanded to this court. Our May 27, 1976 judgment certified the finality of, and amended nunc pro tunc, the July 16, 1974 judgment.

All the proceedings and ensuing judgments against Vesco have clearly and consistently been based on, and related back to, the original, not the amended, complaint. Defendant apparently had no quarrel with this when it filed its brief on appeal to the Second Circuit since it attacked the default on the basis of the adequacy of service of the original summons and complaint, but never raised the point it now presses. There are in our view, therefore, substantial equitable considerations tending to suggest that defendant should not be permitted to raise for the first time at this very late hour, a procedural issue which could have been presented long ago. In any event, however, we find that defendant's contention is without merit.

The general rule is that once a pleading has been amended, and the amended pleading is complete in itself, it supersedes the original. See 3 Moore's Federal Practice §15.08[7] at 939 (2d Ed. 1975); Cicchetti v. Lucey, 514 F.2d

362 (1st Cir. 1975); La Batt v. Twomey, 513 F.2d 641 (7th Cir. 1975); Phillips v. Murchison, 194 F. Supp. 620 (S.D.N.Y. 1961). Defendant contends that the superseding effect takes place the moment the amended pleading is filed. While there is some language to this effect in some of the opinions upon which defendant relies (see Cicchetti and Phillips, supra) none of them were directly concerned with, or addressed, the issue raised by the facts of the instant case. Here the amended complaint was filed before the default judgment on the original complaint was entered, but service was not made, if at all, until after entry of the default judgment. Under these circumstances, plaintiff contends that the mere filing of the amended complaint should not be held to have caused the original complaint to be superseded.

The relationship between filing and service of a complaint in the first instance is that filing properly commences the action, but

> ...commencement is merely the threshold to litigation; unless it is ultimately followed by proper service of original process, or defendant waives proper service, the potential jurisdiction which commencement invokes never ripens into actual jurisdiction. 2 Moore's Federal Practice §4.08 at 1024-5 (2d Ed. 1975).

We think that when an amended pleading is required to be served on a party, it similarly requires proper service in order to become effective as to this party. Thus, we conclude that if service is not, or cannot, be made of the amended pleading,

it does not supersede the original. The question to be determined, therefore, is whether Vesco was properly served with the amended complaint.

Pursuant to Rule 4(i)(1)(E), service of the amended complaint was authorized by this court, on October 19, 1973, to be made as follows:

> (i) by any method of service of process authorized by Rule 4 of the Federa. Rules of Civil Procedure ; or (ii) as to individual defendants, by leaving a copy of the summons and amended complaint herein upon the premises of such defendant's last known residence located in Nassau, Bahamas and mailing a copy thereof to such defendant at either the Post Office Box of such defendant or to the address of such last known residence of such defendant in Nassau, Bahamas...

In light of representations recently made to this court by counsel for plaintiff as to what information was available about Vesco's whereabouts in October of 1973, the terms of this order may not comport with the requirements of due process. See McGee v. International Life Ins. Co., 355 U.S. 220 (1957); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950); Milliken v. Meyer, 311 U.S. 457 (1940).

However, we need not decide this since we find that the method of service outlined by James Bondi in his November 12, 1973 Affidavit of Service does not comply even with the terms of our order, in that Bondi was not able to "leave" the papers at Vesco's last known residence.

The affidavit recounted that two persons, who had been authorized to effect service, went to Nassau, Bahamas

and there located the last known residence of Vesco (Bondi Affidavit ¶12). Two gardeners were present on the grounds of the residence, and they called a private security officer when the process servers identified themselves and stated their mission. After the security officer arrived, the process servers again identified themselves. The officer and gardeners both refused to accept the papers, and the officer took photographs of the process servers. At this point, one server threw the papers over the wall onto the grounds, but the gardeners handed them back to the officer who in turn threw them back into the process servers' car (Bondi Affidavit ¶¶13 and 14). While this attempt was thwarted by personnel on the grounds of this residence, there is no information that these persons were agents of Vesco, so the failure of the attempt cannot be imputed to Vesco's own efforts. Accordingly, we find that the amended complaint was not properly served and thus, that the amended complaint did not supersede the original, and that all the judgments properly relate to the original complaint.

Defendant's second ground for seeking to open the judgment is that the May 27, 1976 judgment "on its face, does not make sense" (Besser letter of September 15, 1976), if its references to the various counts of the complaint are read as relating to the original complaint. We have carefully compared the counts of the complaint and those enumerated in the May 27, judgment, and we conclude that the references in the judgment are accurate. Thus we find that the judgment is "comprehensible" on its face.

Finally, defendant seeks to vacate the May 27 judgment on the ground that the reference to a judgment having been entered on July 12, instead of July 16, 1974, was incorrect. We think that this ground is not sufficiently substantive to merit our opening the judgment especially in view of the entire context of this motion.

Accordingly, we deny defendant's motion to vacate the judgment under Rule 60(b), as well as defendant's motion for leave to extend the time in which to file a notice of appeal.

SO ORDERED.

United States District Judge

DATED: New York, N.Y.

October , 1976.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL CONTROLS CORP.,	)	
Plaintiff,	)	Index No. 73 Civ. 2513 (CES)
-vs-	)	NOTICE OF APPEAL
ROBERT L. VESCO, et al,	)	
Defendants.	)	

NOTICE is hereby given that defendant, Vesco & Co., Inc., hereby appeals to the United States Court of Appeals for the Second Circuit from the Opinion and Order of the Honorable Charles E. Stewart, Jr., filed on the 27th day of October, 1976, denying defendant Vesco & Co., Inc.'s applications.

HANNOCH, WEISMAN, STERN & BESSER
Attorneys for Defendant,
Vesco & Co., Inc.

By Albert G. Besser
ALBERT G. BESSER
A Member of the Firm

ARUM, FRIEDMAN & KATZ
Attorneys for Vesco & Co., Inc.

By Michael Heitner
MICHAEL HEITNER

DATED: November 19th, 1976.

SERVE:

Clerk
United States Court of Appeals
United States Court House
40 Foley Square
New York, New York

Shea, Gould, Climenko & Kramer, Esqs.
330 Madison Avenue
New York, New York 10017

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-vs-

ROBERT L. VESCO, et al,

Defendants.

Index No. 73 Civ. 2518 (CES)

NOTICE OF APPEAL

HANNOCH, WEISMAN, STERN & BESSER
Attorneys for Defendant,
Vesco & Co., Inc.
744 Broad Street
Newark, New Jersey 07102

FORM C

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

CIVIL APPEAL PRE-ARGUMENT STATEMENT

(To be filed by appellant with Clerk of Court of Appeals and served on other parties within ten days after filing notice of appeal.)

(Attach additional sheets if space is not sufficient)

APPEAL FROM DISTRICT COURT

DISTRICT	▶ Southern District of N
DISTRICT COURT DOCKET NUMBER	▶ 73 Civ. 2518/T-6777
DATE FILED IN DISTRICT COURT (MO. DAY YEAR)	▶ June 7, 1973
DATE NOTICE OF APPEAL FILED	▶ November 19, 1976
RELATED CASE(S)	▶ 75-7548/76-7330

CASE TITLE (Complete)

TERNATIONAL CONTROLS CORP., Plaintiff,
-against-
BERT L. VESCO, HARRY L. SEARS, FRANK G. BEATTY, RMAN LeBLANC, STANLEY GRAZE, MILTON F. MEISSNER, RICH J. STRICKLER, RICHARD E. CLAY, WILBERT J. IPES, FREDERICK J. WEYMAR, GILBERT R.J. STRAUB, HENRY BUHL III, RALPH F. DODD, GEORGE PHILLIPE, EL GRADY, SHIRLEY BAILEY, VESCO & CO., INC.,

Is this a cross appeal — YES ☐ NO ☒

COUNSEL NAME FOR APPELLANTS:	ADDRESS	TELEPHONE
um, Friedman & Katz (Michael Heitner)	450 Park Avenue New York, New York	(212) 644-9800
nnoch, Weisman, Stern & Besser (Albert G. Besser)	744 Broad Street Newark, New Jersey	(201) 621-8800
FOR APPELLEES:		
ea, Gould, Climenko & Kramer	330 Madison Ave. New York, New York	(212) 661-3200
rdon, Hurwitz, Butowsky & Baker (David M. Butowsky)	299 ~~Madison~~ PARK Avenue New York, New York	(212) 486-1550

(Check One Box Only)

NATURE OF SUIT

CONTRACT	TORTS	ACTIONS UNDER STATUTES: CIVIL RIGHTS	FORFEITURE/PENALTY	PROPERTY RIGHTS
☐ INSURANCE	PERSONAL INJURY	☐ VOTING	☐ AGRICULTURE	☐ COPYRIGHT ☐ TRADEMARKS
☐ MARINE	☐ AIRPLANE	☐ JOBS	☐ FOOD & DRUG	☐ PATENT
☐ MILLER ACT	☐ ASSAULT, LIBEL & SLANDER	☐ ACCOMMODATIONS	☐ LIQUOR LAWS	OTHER STATUTES
☐ NEGOTIABLE INSTRUMENT	☐ FEDERAL EMPLOYERS' LIABILITY	☐ WELFARE	☐ R.R. & TRUCK	☐ STATE'S RE APPORTIONMENT ☐ AGRICULTURAL ACTS
☐ RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT	☐ MARINE	☐ OTHER CIVIL RIGHTS	☐ AIR LINE REGS	☐ ANTI-TRUST ☐ ECONOMIC STABILIZATION ACT
☒ OTHER CONTRACT	☐ MOTOR VEHICLE	PRISONER PETITIONS	☐ OTHER	☐ BANKRUPTCY ☐
	☐ OTHER PERSONAL INJURY	☐ VACATE SENTENCE (2255)	LABOR	☐ BANKS AND BANKING ☐ ENVIRONMENTAL MATTERS
REAL PROPERTY	PERSONAL PROPERTY		☐ FAIR LABOR STANDARDS	☐ COMMERCE ICC RATES, ETC. ☐ CONSTITUTIONALITY OF STATE STATUTES
☐ CONDEMNATION	☐ FRAUD	☐ PAROLE AND REVIEW	☐ LABOR/MGMT. RELATIONS	☐ DEPORTATION ☐
☐ FORECLOSURE	☐ OTHER PERSONAL PROPERTY DAMAGE	☐ HABEAS CORPUS	☐ LABOR/MGMT. REPORTING & DISCLOSURE ACT	☐ SELECTIVE SERVICE ☐ NAVAL TITLE III
☐ RENT LEASE & EJECTMENT		☐ MANDAMUS	☐ RAILWAY LABOR ACT	☐ SECURITIES/COMMODITIES EXCHANGE ☐ OTHER STATUTORY ACTIONS
☐ TORTS TO LAND		☐ CIVIL RIGHTS	☐ OTHER LABOR LITIGATION	☐ SOCIAL SECURITY
☐ ALL OTHER REAL PROPERTY				☐ TAX SUITS

METHOD OF DISTRICT COURT DISPOSITION

Judgment before trial:		Prisoner petition:	
Summary Judgment	☐	Granted	☐
Dismissal	☐	Denied	☐
Other	☐		
Judgment during or after trial:		Injunction:	
Court trial	☐	Granted	☐
Jury trial	☐	Denied	☐
During trial	☐		
Appeal from order:		Damages:	
Preliminary injunction	☐	Granted	☐
Class action	☐	Amount	
Amend answer	☐	$	
Enforce settlement	☐	Denied	☐
Counsel fees	☐	Other relief (specify)	
Stay	☐		
Other	☒		

See description below.

APPROXIMATE SIZE OF RECORD ▶ NUMBER OF EXHIBITS ▶ HAS TRANSCRIPT BEEN MADE? YES ☒ NO ☐

BRIEF DESCRIPTION OF NATURE OF CASE AND RESULT BELOW: Plaintiff, International Controls Corp. (ICC), moved for an order permitting it to satisfy its judgment against defendant, Robert L. Vesco, by reaching shares of ICC stock held of record by defendant, Vesco & Co., Inc. A hearing was held on June 30, 1975 for the purpose of determining plaintiff's claim that ICC is entitled to reach the said stock on the theory Vesco & Co. is the alter ego of Robert Vesco or on the theory that the transfer by Vesco and Vesco & Co. of the ICC stock was fraudulent and should be set aside. The Court found that Vesco & Co. is the alter ego of Robert L. Vesco. (See Rider)

ISSUES PROPOSED TO BE RAISED ON APPEAL:

The judgment is improper because it refers to the original complaint which was superseded and rendered of no effect by the filing of an amended complaint.
The nunc pro tunc entrance of judgment is inappropriate and improper.
The judgment is unduly vague, imprecise and confusing and should be vacated.
The Court erred in not vacating and re-entering judgment so that all important and complicated issues could be resolved.

I, Attorney for the Appellant, hereby certify that satisfactory arrangements have been made with the court reporter for payment of the cost of the transcript (FRAP 10 (b)). (Check one box)

I ☐ (1) have already ordered the transcript to be prepared OR

☐ (2) will order it to be prepared at the time required by the Staff Counsel in the implementation of the Civil Appeals Management Plan.

COUNSEL'S SIGNATURE By Albert G. Besser
ALBERT G. BESSER
A Member of the Firm
FOR APPELLANTS: HANNOCH, WEISMAN, STERN & BESSER

DATE November 29, 1976

R I D E R

Case Title Continued

IOS LTD., COLUMBUS TRUST COMPANY, LIMITED BAHAMAS COMMONWEALTH BANK, INTERNATIONAL BANCORP, KILMOREY INVESTMENTS LTD., VALUE CAPITAL LTD., GLOBAL HOLDINGS LTD., GLOBAL FINANCIAL LTD., BUTLERS BANK, LTD., (now known as WHO HOLDINGS LTD.), ALLAN J. BUTLER, BANK CANTRADE LTD., FAIRFIELD AVIATION CORPORATION, FAIRFIELD GENERAL CORPORATION, SKYWAYS LEASING CORPORATION and MARINE MIDLAND BANK - NEW YORK,

Defendants,

ANDEAN CREDIT S.A. and JOHN K. SCHEMMER, Receiver

Intervenors.

BRIEF DESCRIPTION OF NATURE OF CASE AND RESULT BELOW (Cont'd):

It ordered that: (1) A receiver be appointed to collect from defendants Vesco and Vesco & Co. all shares, certificates of shares of ICC and Fairfield General Corporation stock in their possession within 20 days of appointment; (2) That Robert L. Vesco apply for the required official consent for such transfer; (3) That the decision as to the right of ICC as judgment creditor to seek cancellation of stock held by Vesco and Vesco & Co. as judgment debtor, be deferred.

An appeal to this Court (75 Civ. 7548, filed September 19, 1975) from that decision resulted in a remand to the Southern District for clarification of judgment and determination of specific claims on which money judgment entered. On remand, upon order to show cause, Honorable Charles E. Stewart, Jr., signed an amended judgment nunc pro tunc as of July 12, 1974.

After another appeal was dismissed because it was filed out of time Vesco & Co., Inc. moved before Judge Stewart for relief pursuant to Rule 60(b), which was denied.

FORM D

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

221a

TRANSCRIPT INFORMATION
CIVIL APPEAL

To be completed by counsel for appellant in civil appeal from district court within ten days after filing notice of appeal.

DISPOSITION OF COPIES: (1) to Clerk of the Court of Appeals; (2) and (3) to Court Reporter; (4) Counsel for Appellee (5) retained by Counsel for Appellant.

THIS SECTION TO BE COMPLETED BY COUNSEL FOR APPELLANT

CASE TITLE	DISTRICT	DOCKET NUMBER
NTERNATIONAL CONTROLS CORP., Plaintiff, -against- OBERT L. VESCO, HARRY L. SEARS, RANK G. BEATTY, NORMAN LeBLANC, TANLEY GRAZE, MILTON F. MEISSNER, LRICH J. STRICKLER, et al, Defendants.	Southern District	73 Civ. 2518/T-6777
	JUDGE: Stewart	APPELLANT: Vesco & Co., Inc.
	COURT REPORTER: Southern District Court Reporters, U.S. Courthouse, N.Y.C.	COUNSEL FOR APPELLANT: Arum, Friedman & Katz, Michael Heitner, Esq., 450 Park Ave., N.Y.C. 10022 -and- Hannoch, Weisman, Stern & Besser, Albert G. Besser, Esq., 744 Broad Street, Newark, New Jersey 07102

TRANSCRIPT ORDER
Must be completed

DESCRIPTION OF PROCEEDINGS FOR WHICH TRANSCRIPT IS REQUIRED (INCLUDE DATES)

☐ I am ordering a transcript.

XX I am not ordering a transcript.
Reason:

☒ Daily copy is available.
☐ Other. Attach explanation.

METHOD OF PAYMENT ☐ FUNDS ☐ CJA VOUCHER (CJA 21)

☐ PREPARE TRANSCRIPT OF PRE-TRIAL PROCEEDINGS
☐ PREPARE TRANSCRIPT OF TRIAL
☐ PREPARE TRANSCRIPT OF OTHER POST-TRIAL PROCEEDINGS
☐ PREPARE (Other: Specify)

DELIVER TRANSCRIPT TO: (NAME, ADDRESS, TELEPHONE)

I certify that I have made satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)). I understand that unless I have already ordered the transcript, I shall order its preparation at the time required by the Civil Appeals Management Plan, F.R.A.P. and the local rules.

COUNSEL'S SIGNATURE	DATE
HANNOCH, WEISMAN, STERN & BESSER By Albert G. Besser ALBERT G. BESSER	November 29, 1976

COURT REPORTER ACKNOWLEDGEMENT
To be completed by court reporter. Return one copy to clerk, U.S. Court of Appeals.

DATE ORDER RECEIVED	ESTIMATED COMPLETION DATE	ESTIMATED NUMBER OF PAGES
SIGNATURE OF COURT REPORTER		DATE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

International Controls Corp.,
Plaintiff

-vs-

Vesco & Co., Inc., et als
Defendants.

CASE NO. 73-Civ. 2518

JUDGE Stewart C.E.

CLERK'S CERTIFICATE

----------X

I, RAYMOND F. BURGHARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified copy of docket entries lettered A-V, and the original filed papers numbered 1 thru 354, inclusive, constitute the record on appeal in the above entitled proceeding; except for the following missing documents:

DATE FILED	PROCEEDINGS
5/29/75	Affidavit of service of Harry J. Choromos on May 21, 1975 of Order to Show Cause and affidavit of Daniel L. Carroll, by personal delivery upon Hannoch, Weisman, Stern & Besser, Esqs.
5/29/75	Affidavit of service of Louis Brander dated May 29, 1975 of Order to Show Cause and affidavit of Daniel L. Carroll upon Robert L. Vesco by mail at 170 Denville Road, Boonton Township, New Jersey.
5/29/75	Affidavit of service of Stella L. Scott dated May 20, 1975 of Order to Show Cause and affidavit of Daniel L. Carroll by certified mail to R.L. Vesco, 170 Denville Road, Boonton Township, New Jersey.
6/3/75	Affidavit of Daniel L. Carroll submitted to bring to the attention of the court additional facts in connection with ICC's application brought on by Order to Show Cause.
8/12/76	Stipulation re: Beatty extending time to answer.
8/12/76	Stipulation re: Snipes extending time to answer.
9/1/76	Stipulation re: Beatty extending time to answer.
9/1/76	Stipulation re: Snipes extending time to answer.

TE FILED	PROCEEDINGS
13/76	Stipulation re: Marine Midland Bank extending time to answer.
20/76	True copy of U.S.C.A. Order granting dismissal of appeal from U.S.D.C.
27/76	Stipulation re: Marine Midland Bank extending time to answer.
/14/76	Stipulation re: Beatty extending time to answer.
/14/76	Stipulation re: Snipes extending time to answer.

IN TESTIMONY WHEREOF, I have caused the seal of the d Court to be hereunto affixed, at the City of New York, in the thern District of New York, this 2nd day of December, in the r of our Lord, One thousand nine hundred and seventy-six, and of Independence of the United States the 200th year.

s/ Raymond F. Burghardt
Clerk of the Court

INTERNATIONAL CONTROLS CORP.,

Plaintiff,

-vs-

VESCO & CO., INC.; et als

Defendants.

United States Court
Southern District of
New York

Case No. 73-Civ. 2518(CES)

Judge Stewart, CE

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